BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR,

For the Years 1893-94.

STATE OF NEBRASKA.

LINCOLN, NEB.:
STATE JOURNAL COMPANY, PRINTERS.
1894.

REPORT OF THE ATTORNEY GENERAL.

STATE OF NEBRASKA, LEGAL DEPARTMENT,
LINCOLN, NEB., December 20, 1894.

To His Excellency, Lorenzo Crounse, Governor.

SIR: Pursuant to the provisions of section 22, article V, of the constitution, which defines the duties of the officers of the Executive Department in making their reports, and in compliance with legislative enactments relating to the same, I have the honor to submit herewith the biennial report of the Legal Department.

It will be observed that the business in this department shows a marked increase. The establishing of manufactures, the building up of large commercial enterprises, the extensive cultivation of our great agricultural resources, the increase in population, in short, the development of the state, must, of necessity, greatly augment the duties and responsibilities connected with every department of the state's government. The Legal Department is by no means an exception. Interests of men vary. Controversies arise. As the state grows larger in population and richer in material resources, the volume of business in this department becomes greater.

The Attorney General, by virtue of his office, is a member of the

Board of Public Lands and Buildings,
Board of Educational Lands and Funds,
State Board of Transportation,
Board of Purchase and Supplies,
State Board of Canvassers,
State Board of Pharmacy,
State Banking Board,
Board to settle with delinquent County Treasurers,
State Board of Health.

These boards have important and varied duties to perform. They require careful attention and much time at the hands of this office. I desire to make special mention of one of these boards, viz., the State

Banking Board. An examination will disclose the fact that there are now pending a large number of cases growing out of the law establishing this board. In addition, it may be said, a large number have been adjusted, the depositors of the banks have been paid in full, or secured, and the cases settled.

I beg leave to respectfully submit that the cases now in court, in which the Attorney General appears, and other matters pertaining to the administration of this department will be found set forth in schedules hereto attached, from "A" to "E" inclusive.

I.

In case No. 1 the point is, has the State Board of Transportation jurisdiction and power to issue an order, and enforce it, compelling a railroad company to furnish like facilities to persons desiring in good faith to engage in buying and shipping grain and produce over such road? The supreme court of Nebraska held that the Board of Transportation had such power. (See State, ex rel. Board of Transportation, v. M. P. R. Co., 29 Neb., 550.) This case is now under advisement in the United States supreme court.

Cases Nos. 2, 3, 4, 5, 6, and 7 arise out of an organized effort to prevent the State Board of Transportation from enforcing the provisions of an act of the legislature of 1893, known as House Roll No. 33, or as the "Maximum Rate Bill." In this act it was provided that all railroads in this state, except those that had been constructed since the 1st day of January, 1889, or that might be built before the 31st day of December, 1899, should not charge more than the schedule of rates in said act set forth. This law, under the provisions of our constitution, was to have gone into force and effect on the 1st day of August, 1893. On the 27th day of July, 1893, the Board of Transportation of the state of Nebraska was served with a summons, accompanied with a notice of application for a temporary injunction, to be issued out of the circuit court of the United States for the district of Nebraska, at the instance of the Chicago, Burlington & Quincy Railroad Company, in an action pending in said court, wherein said company was plaintiff and the Attorney General et al., Board of Transportation, were defendants. Immediately following this, suits were instituted in the same court by the stockholders of the Chicago, Burlington & Quincy Railroad Company, the Chicago & Northwest-

ern Railroad Company, the Union Pacific Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Missouri Pacific Railway Company against said Board of Transportation and the Attorney General, and all other parties who might undertake to enforce the provisions of House Roll No. 33. The object of all these suits was to test the constitutionality of said law. It was claimed by the different plaintiffs that the law was unconstitutional upon the following grounds:

1st. That said law violates the constitution of the United States and the constitution of the state of Nebraska, prohibiting the passage of any law violating or impairing the obligation of a contract.

2d. That it violates the provisions of the constitution of the United States and of the state of Nebraska, which provides that property shall not be taken for public uses without just compensation.

3d. That it violates the constitution of the United States and of the state of Nebraska, providing that property shall not be taken without due process of law.

4th. That it violates the constitution of the United States and the constitution of the state of Nebraska, wherein it is provided that every one shall have the equal protection of the law.

5th. That it violates the constitution of the United States, whereby congress is given sole power to regulate commerce between the States.

6th. That it violates the constitution of the state of Nebraska, wherein it provides that the legislature shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this state.

7th. That the provisions of the constitution of the state of Nebraska were not complied with in the passage of the bill.

8th. That the constitution of the state of Nebraska was violated, wherein it is provided that all acts amendatory of other acts shall contain the sections sought to be amended.

9th. That it violates the provisions of the constitution of the state of Nebraska, in that said act confers judicial powers upon executive officers and executive powers upon judicial officers.

10th. That said act violates the provisions of the constitution of the state of Nebraska, which prohibits class legislation.

It will be seen by the above that the points raised in these actions involve grave constitutional questions.

Objections were filed, in the first mentioned suit, to the granting of a temporary injunction. The court, after taking the question under advisement a few days, allowed a temporary restraining order.

In view of the gravity of the cases and the important matters involved, after advising with members of the Board of Transportation, Hon. John L. Webster, of the city of Omaha, was called as counsel. He has given the cases a great deal of time and study. Like myself, he has been compelled to expend his own funds for traveling and other expenses connected with the cases. Answers were filed to the merits of the cases and preparation was made for trial. Testimony was taken at Lincoln, Omaha, Chicago, New York city, and Boston during the fall and winter of 1893 and 1894. This department has been greatly handicapped in the trial of these cases. The issues were great; the results were of vast importance; yet the legislature that passed this law failed to make any appropriation whatever for the purpose of paying the expenses of litigation that was sure to follow. I have gone in person and have sent others to different parts of the state, and to other states, seeking witnesses competent to testify. One of the principal issues in this case was the value to be placed upon the railroad property in this state and the necessary expense of constructing a line of railroad. It followed, as a matter of course, that the evidence to prove these values must come from men who had knowledge or were engaged in the construction of railroads, and these men were found almost invariably employed by the railroad companies; but after diligent search and quite an expense we obtained the testimony of two men, whose reputation and knowledge in their respective lines could not be challenged. Between fourteen hundred and fifteen hundred closely printed pages of testimony were taken. Two briefs of over one hundred and seventy-five pages each were prepared, fully setting forth our position.

On the 22d day of June, 1894, before the Hon. David J. Brewer, one of the justices of the supreme court of the United States, and Hon. Elmer S. Dundy, judge of the United States district court for the district of Nebraska, the cases were tried on the pleadings, and the testimony which had been taken before numerous commissioners. The case was argued, and the court took the same under advisement, and on the 12th day of November, 1894, a decision was rendered sustaining our position in every one of the above proposi-

tions, except the fact that the schedule of rates established in said law were too low to provide the railroad companies with a fair, reasonable compensation at the present time, but leaving that question to be reopened at any time that the Board of Transportation deemed that the increase of business of the different railroad companies was sufficient to allow a reasonable compensation to the companies if the rates established in said act were put in force. That is to say, the "Maximum Freight Law," as passed by our legislature, should not be put in operation during the period of financial depression now prevailing, but with the advent of business prosperity, now so confidently looked for at an early day, the law would be enforced. To this judgment of the court exceptions were duly taken, and the case was placed in proper shape to be reviewed by the court of last resort. The State Board of Transportation unanimously resolved that such review should be had. These cases have taken much time and required great labor. And here I desire to express my thanks to the Board of Secretaries for their prompt and active assistance in the preparation of the several cases for trial, and especially to Hon. W. A. Dilworth, who has been of great assistance, and has devoted the greater part of his time for months to the cases, and has expended his private funds for traveling and other expenses in procuring and assisting me to take the testimony that was filed with the court.

THE TRANSFER SWITCH LAW.

Another law that was passed by the legislature of 1893, and which took effect August 1, 1893, was what is known as the "Transfer Switch Law." The object of the law was to compel the various railroad companies in this state to put in transfer switches at all points where two or more roads receive and deliver freight, whereby freight in car load lots could be transferred from one road to the other without breaking bulk. The law provided that upon a hearing before the Board of Transportation, upon a petition filed by the railroad companies interested, if the putting in of a transfer switch was unreasonable or unusually burdensome, that the said board might relieve the road from such duty. The railroad companies filed petitions with the Board of Transportation, asking to be relieved from placing the said transfer switches at all places in the state where they did not have a connecting switch, which they claimed answered the same purpose.

The board examined various places and took testimony of interested parties, and out of the numerous places examined two places were selected as test cases: One at Schuyler in Colfax County, touched by the Union Pacific railway and the Burlington & Missouri River railroad. The other at the city of O'Neill in Holt county, the terminus of the Sioux City, O'Neill & Western railroad, and also a station on the Fremont, Elkhorn & Missouri Valley railroad. An application for a *mandamus* was first filed in the supreme court of the state of Nebraska to compel the railroad companies to put in the transfer switches at those two places. The court refused to take jurisdiction, referring the matter to the district court of the counties in which the towns were located. Thereupon application was made to the Hon. William Marshall, judge of the sixth judicial district for an alternative writ of *mandamus* to compel the Union Pacific Railway Company and the Burlington & Missouri River Railroad Company to put in the transfer switch at the city of Schuyler. The alternative writ was allowed, and the company directed to put in the transfer switch according to the provisions of the law, and to place in force the rates provided for in said act, or to show cause on the 15th day of October, 1894, why the order was not complied with. On the 15th day of October the two railroad companies filed their demurrers, thereby contesting the constitutionality of the act. Upon that day a hearing was had, argument made before the court, and the case taken under advisement, where the same still remains.

In the O'Neill case application was made to the Hon. Moses P. Kinkaid, judge of the fifteenth judicial district, in which district is situated the city of O'Neill, for an alternative writ of *mandamus* against the Fremont, Elkhorn & Missouri Valley Railroad Company and the Sioux City, O'Neill & Western Railroad Company to compel them to comply with the provisions of the law aforesaid. The alternative writ was granted and made returnable to the court on the 27th day of August, 1894, directing the said railroad companies to comply with the law or to show cause. On the 27th day of August I went to O'Neill and found the court in the midst of a very important trial and could not obtain the ear of the court. The companies filed demurrers to the application and raised the constitutionality of the law. The case was heard before the Hon. S. M. Chapman, who was holding court in the fifteenth district. It is now held under advisement.

II.

Schedule "B" is a list of cases, during the present term, that have been determined, or that are now pending in the supreme court of Nebraska, that have grown out of and arise under chapter 37, Session Laws, 1889, entitled "Banking."

In general No. 3982, The State of Nebraska v. The Commercial State Bank et al., the question of the jurisdiction of the supreme court was raised, and the court held jurisdiction.

In general No. 4951, State of Nebraska v. The State Bank of Milligan, the constitutionality of the "Banking Act" was up before the court and argued at great length, and the court sustained the law. I submit that there is no doubt but what very little can be said against, and much can be offered in favor of, a good, wholesome law providing regulations for state banks. The present law regulating banks in Nebraska has many good features, and has been productive of much good, but I am inclined to the opinion it can be so amended that it will protect to a much greater degree the depositors, and at the same time work no hardship on the honest, legitimate banking fraternity of the state.

III.

Schedule "C" contains a full statement of all criminal cases and cases other than original in the supreme court wherein the Attorney General has been called upon to appear during the present term.

IV.

In Schedule "D" will be found original cases brought in the supreme court and in which the Attorney General has appeared during the term covered by this report. It will be seen they are petitions and applications for *habeas corpus*, *mandamus*, *quo warranto*, etc., such cases as are provided for under section 2, article VI, of the constitution of the state of Nebraska. This schedule also contains cases in the district courts of the state wherein it has been the duty of the Attorney General to appear during the present term.

V.

Schedule "E" will be found to contain the most important opinions and communications issued by this department during the term. The very large number of opinions that have been called for and prepared by the Attorney General, during the past two years, are of record in the office. Many of them in their nature are not of general public interest, and it is therefore deemed expedient to avoid the expense incident to printing them at this time. Only those papers of greater importance and general interest are herein set forth.

In conclusion, I congratulate you, and through you the people of Nebraska, on the splendid march of progress our state has made. It has set the pace for, and is commanding the admiration of, states much older in years and larger in experience. Adversity is the exception. Prosperity is the rule. While Nebraska, like several of her sister states, has suffered during the past year, it is to be said that the people of the state are not discouraged; but on the contrary they know full well, favorable conditions mean the return of prosperous times. With its educational system and its splendid resources, it is already entitled to the epithet—*great.* That it may continue its rapid and substantial growth is your wish and mine. That it will continue, I have no doubt.

Respectfully submitting this report, I remain,

Your obedient servant,

GEO. H. HASTINGS,
Attorney General.

I. SCHEDULE "A."—CASES IN UNITED STATES SUPREME AND CIRCUIT COURTS.

No. 1.

Missouri Pacific Railroad Co. v. The State of Nebraska, ex rel. State Board of Transportation.	Supreme court United States. Under advisement. This cause was originally from Cass county. It was an application for mandamus to compel the Missouri Pacific Railway Company to comply with an order, made by the State Board of Transportation, and permit a grain elevator to be erected on certain ground. The writ was allowed by the supreme court of Nebraska, and the cause was then taken by the railway company to supreme court of the United States.

No. 2. (No. 55, Docket Q.)

C., B. & Q. R. R. Co. v. Geo. H. Hastings, Attorney General, et al., Board of Transportation.	United States circuit court. Pending. Injunction.

No. 3. (No. 59, Docket Q.)

Oliver Ames et al. v. U. P. R. R. Co. et al.	United States circuit court. Sustained. Injunction.

No. 4. (No. 60, Docket Q.)

Geo. Smith et al.
v.
C. & N. W. R. W. Co. et al.

United States circuit court. Injunction. Sustained.

No. 5. (No. 61, Docket Q.)

Oliver Ames, Second Executor, et al.
v.
M. P. R. W. Co. et al.

United States circuit court. Injunction. Pending.

No. 6. (No. 63, Docket Q.)

Henry L. Higginson et al.
v.
C., B. & Q. R. R. Co. et al.

United States circuit court. Injunction. Sustained.

No. 7. (No. 64, Docket Q.)

James C. Starr et al.
v.
C., R. I. & P. R. R. Co. et al.

United States circuit court. Injunction. Pending.

II. SCHEDULE "B."—CASES UNDER BANKING LAW.

No. 1. (7005.)

State of Nebraska v. The State Bank of Brunswick.	Antelope county. Application of attorney general for receiver. Cause pending.

No. 2. (7227.)

State of Nebraska v. Bank of Amherst.	Buffalo county. Application of attorney general for receiver. Pending.

No. 3. (5218.)

State of Nebraska v. Commercial & Savings Bank.	Buffalo county. Receiver appointed on application of attorney general. Pending.

No. 4. (5744.)

State of Nebraska v. Ainsworth State Bank.	Brown county. Receiver appointed on application of attorney general. Pending.

No. 5. (6765.)

State of Nebraska
v.
Bank of Ansley.

Custer county. Application of attorney general for a receiver. Pending.

No. 6. (7257.)

State of Nebraska
v.
Commercial Bank of Weeping Water.

Cass county. Application of attorney general for receiver. Pending.

No. 7. (5078.)

State of Nebraska
v.
Farmers & Merchants Bank.

Custer county. Receiver appointed on application of attorney general. Pending.

No. 8. (5079.)

State of Nebraska
v.
Kloman & Arnold.

Custer county. Receiver appointed on application of attorney general. Pending.

No. 9. (5587.)

Carl A. Arnold et al.
v.
Globe Investment Co.

Custer county. Proceedings in error growing out of the State v. Kloman & Arnold, general No. 5079. Affirmed.

No. 10. (5586.)

Carl A. Arnold et al.
v.
David F. Weimer.

Custer county. Proceedings in error growing out of general No. 5079, State v. Kloman & Arnold. Affirmed.

No. 11. (5818.)

State of Nebraska
v.
Bank of Inland.

Clay county. Receiver appointed on application of attorney general. Creditors paid in full.

No. 12. (6294.)

State of Nebraska
v.
McCague Savings Bank of Omaha.

Douglas county. Application of attorney general for receiver. Depositors secured. Receiver discharged.

No. 13. (6337.)

State of Nebraska
v.
The American Savings Bank of Omaha.

Douglas county. Application of attorney general for receiver. Pending.

No. 14. (6348.)

State of Nebraska
v.
State Bank of Franklin.

Franklin county. Application of attorney general for receiver. Pending.

No. 15. (4951.)

State of Nebraska v. Exchange Bank of Milligan.	Fillmore county. Receiver appointed on application of attorney general. Depositors and creditors paid in full.

No. 16. (6226.)

State of Nebraska v. State Bank of Cortland.	Gage county. Application of attorney general for receiver. Pending.

No. 17. (6325.)

State of Nebraska v. American Bank of Beatrice.	Gage county. Application of attorney general for receiver. Bond given to pay all creditors and depositors in full. Receiver discharged.

No. 18. (6810.)

State of Nebraska v. First Commercial Bank of Odell.	Gage county. Application of attorney general for receiver. Pending.

No. 19. (6433.)

State of Nebraska v. Holt County Bank.	Holt county. Application of attorney general for a receiver. Pending.

No. 20. (6018.)

State of Nebraska v. Farmers & Merchants Bank of Elk Creek.	Johnson county. Application of attorney general for receiver. Bond given. Depositors paid. Receiver discharged.

No. 21. (6860.)

State of Nebraska v. The Pickering Banking Company	Jefferson county. Application of attorney general for receiver. Pending.

No. 22. (6315.)

State of Nebraska v. Keith County Bank.	Keith county. Application of attorney general for receiver. Bond given to pay creditors and depositors in full. Receiver discharged.

No. 23. (——.)

State of Nebraska v. Bank of Verdigris.	Knox county. Application of attorney general for receiver. Pending.

No. 24. (5743.)

State of Nebraska v. Bank of Springview.	Keya Paha county. Receiver appointed on application of attorney general. Pending.

No. 25. (6336.)

State of Nebraska
v.
The Nebraska Savings Bank of Lincoln.

Lancaster county. Application of attorney general for receiver Pending.

No. 26. (4821.)

State of Nebraska
v.
Farmers & Drovers Bank.

Madison county. Receiver appointed on application of attorney general. Pending.

No. 27. (5823.)

State of Nebraska
v.
State Bank of Johnson.

Nemaha county. Receiver appointed on application of attorney general. Pending.

No. 28. (6360.)

State of Nebraska
v.
Plainview State Bank.

Pierce county. Application of attorney general for receiver. Depositors and creditors paid in full. Receiver discharged.

No. 29. (6324.)

State of Nebraska
v.
Farmers State Bank of Shubert.

Richardson county. Application of attorney general for receiver. Depositors and creditors paid in full. Receiver discharged.

No. 30. (6423.)

State of Nebraska
v.
Farmers & Merchants Bank of Bassett.

Rock county. Application of attorney general for receiver. Pending.

No. 31. (5962.)

State of Nebraska
v.
State Bank of Wahoo.

Saunders county. Application of attorney general for receiver Pending.

No. 32. (6681.)

State of Nebraska
v.
Bank of Hay Springs.

Sheridan county. Application of attorney general for receiver. Pending.

No. 33. (6680.)

State of Nebraska
v.
Bank of Rushville.

Sheridan county. Application of attorney general for receiver. Cause pending.

No. 34. (5665.)

State of Nebraska
v.
State Bank of Nebraska, at Crete.

Saline county. Receiver appointed on application of attorney general. Affairs of bank wound up. Receiver discharged.

No. 35. (4949.)

State of Nebraska v. Bank of Western.	Saline county. Receiver appointed on application of attorney general. Pending.

No. 36. (3982.)

State of Nebraska v. Commercial State Bank et al.	York county. Receiver appointed on application of attorney general. Affairs of bank wound up Receiver discharged.

III. SCHEDULE "C."—CRIMINAL CASES AND CASES OTHER THAN ORIGINAL IN THE SUPREME COURT.

No. 1. (7391.)

Barrett Scott
v.
The State of Nebraska.

Antelope county. Embezzlement. Pending.

No. 2. (6926.)

Geo. P. Housh
v.
The State of Nebraska.

Antelope county. Assault with intent to kill. Under advisement.

No. 3. (3625.)

Lish Nelson
v.
The State of Nebraska.

Adams county. Murder in second degree. Under advisement.

No. 4. (6065.)

James D. Hawthorne
v.
The State of Nebraska.

Buffalo county. Contempt. Under advisement.

No. 5. (6032.)

John Dwyer
v.
The State of Nebraska.

Buffalo county. Selling liquor without license. Dismissed.

No. 6. (6288.)

Joseph Lamma
v.
The State of Nebraska.

Buffalo county. Murder. Pending.

No. 7. (6655.)

John McAleer
v.
The State of Nebraska.

Butler county. Embezzlement. Pending.

No. 8. (6565.)

G. W. Lidell
v.
The State of Nebraska.

Boone county. Violation of liquor law. Pending.

No. 9. (6553.)

Samuel Barnes
v.
The State of Nebraska.

Burt county. Grand larceny. Reversed.

No. 10. (5733.)

Michael Lamb
v.
The State of Nebraska.

Boone county. Grand larceny. Affirmed.

No. 11. (5412.)

The State of Nebraska
v.
Ezra D. Stewart.

Butler county. Exceptions by county attorney. Pending.

No. 12. (7269.)

David Hamilton
v.
The State of Nebraska.

Buffalo county. Embezzlement. Pending.

No. 13. (7166.)

G. H. Wilson
v.
The State of Nebraska.

Burt county. Removing mortgaged property.

No. 14. (6832.)

Harry Hill
v.
The State of Nebraska.

Cass county. Murder. Affirmed.

No. 15. (6075.)

Alonzo Patterson
v.
The State of Nebraska.

Custer county. Rape. Reversed.

No. 16. (6276.)

Daniel McAleese
v.
The State of Nebraska.

Cheyenne county. Contempt. Under advisement.

No. 17. (6192.)

Geo. Botsch et al.
v.
The State of Nebraska.

Colfax county. Assault with intent to kill. Under advisement.

No. 18. (6539.)

Cora Whitner
v.
The State of Nebraska.

Colfax county. Assault and battery. Pending.

No. 19. (6513.)

Bernard Pill
v.
The State of Nebraska.

Colfax county. Peddling without obtaining license. Under advisement.

No. 20. (6439.)

John A. Boughn
v.
The State of Nebraska.

Cedar county. Assault and battery. Under advisement.

No. 21. (6304.)

Chas. Van Deventer
v.
The State of Nebraska.

Cass county. Assault and battery. Reversed.

No. 22. (3150.)

Thomas Vincent
v.
The State of Nebraska.

Custer county. Murder. Reversed.

No. 23. (3779.)

Bush Elliott
v.
The State of Nebraska.

Cheyenne county. Grand larceny. Reversed.

No. 24. (5156.)

Matilda Dressen
v.
The State of Nebraska.

Cherry county. Assault with intent to kill. Reversed.

No. 25. (5472.)

James H. Blenkiron et al.
v.
The State of Nebraska.

Cedar county. Assault with intent to kill. Reversed.

No. 26. (4033.)

Albert E. McCoy
v.
The State of Nebraska.

Cedar county. Grand larceny. Dismissed.

No. 27. (7131.)

Robert Barr
v.
The State of Nebraska.

Cuming county. Assault and battery. Pending.

No. 28. (6855.)

Alexander Dobson
v.
The State of Nebraska.

Cherry county. Grand larceny. Pending.

No. 29. (6783.)

Geo. Pflueger
v.
The State of Nebraska.

Cuming county. Murder. Pending.

No. 30. (6844.)

Albert Altendorf
v.
The State of Nebraska.

Douglas county. Assault with intent to commit great bodily injury. Pending.

No. 31. (5999.)

B. L. Wanzer
v.
The State of Nebraska.

Dixon county. Assault with intent to commit rape. Affirmed.

No. 32. (5969.)

Philip Leiber
v.
The State of Nebraska.

Douglas county. Violation of state medical law. Reversed.

No. 33. (5942.)

Frank P. Ketchell
v.
The State of Nebraska.

Douglas county. Obtained money under false pretenses. Reversed.

No. 34. (6135.)

A. C. Griffen
v.
The State of Nebraska.

Douglas county. Embezzlement. Pending.

No. 35. (6483.)

Jacob Reap
v.
The State of Nebraska.

Dixon county. Disturbing a religious society. Pending.

No. 36. (6463.)

Bart Foley
v.
The State of Nebraska.

Douglas county. Violation of city ordinance regulating saloons. Affirmed.

No. 37. (6690.)

Julius S. Cooley
v.
The State of Nebraska.

Douglas county. Contempt. Pending.

No. 38. (5701.)

B. F. Madsen
v.
The State of Nebraska.

Douglas county. Bribery. Pending.

No. 39. (5506.)

Joseph Hobeck
v.
The State of Nebraska.

Douglas county. Gambling. Dismissed.

No. 40. (5631.)

John F. Jolly
v.
The State of Nebraska.

Douglas county. Assault with intent to wound. Pending.

No. 41. (5485.)

C. Gee Woo
v.
The State of Nebraska.

Douglas county. Violation of state medical law. Held the law constitutional. Reversed on account of defect in information.

No. 42. (5486.)

Wm. Nestlehouse
v.
The State of Nebraska.

Douglas county. Gambling. Dismissed.

No. 43. (5487.)

Dan Geiser
v.
The State of Nebraska.

Douglas county. Gambling. Dismissed.

No. 44. (5355.)

Joseph Rowles
v.
The State of Nebraska.

Douglas county. Selling liquor without license. Affirmed.

No. 45. (4708.)

James Ashford
v.
The State of Nebraska.

Douglas county. Burglary. Reversed.

No. 46. (4739.)

Andrew J. Cooper et al.
v.
The State of Nebraska.

Douglas county. Grand larceny. Dismissed.

No. 47. (4848.)

Ed. Hockesheimer
v.
The State of Nebraska.

Douglas county. Forgery. Affirmed.

No. 48. (5008.)

Geo. K. Morehouse
v.
The State of Nebraska.

Douglas county. Embezzlement. Affirmed.

No. 49. (5291.)

Silas Cobb
v.
The State of Nebraska.

Douglas county. Contempt. Reversed.

No. 50. (5292.)

W. J. Clair
v.
The State of Nebraska.

Douglas county. Contempt. Reversed.

No. 51. (5352.)

Fred Hunzinger
v.
The State of Nebraska.

Douglas county. Selling liquor without license. Affirmed.

No. 52. (5353.)

Frank Shannon
v.
The State of Nebraska.

Douglas county. Selling liquor without license. Affirmed.

No. 53. (5354.)

Ernest Soehl
v.
The State of Nebraska.

Douglas county. Selling liquor without license. Affirmed.

No. 54. (4238.)

Phineas Langford et al.
v.
The State of Nebraska.

Dakota county. Robbery. Affirmed.

No. 55. (4197.)

John Flannagon
v.
The State of Nebraska.

Dakota county. Robbery. Affirmed.

No. 56. (7359.)

Geo. A. McCall
v.
The State of Nebraska.

Dawes county. Rape. Pending.

No. 57. (7331.)

Wm. Thompson
v.
The State of Nebraska.

Dawson county. Rape. Pending.

No. 58. (7091.)

Patrick Ford, Jr.,
v.
The State of Nebraska.

Douglas county. Grand larceny. Pending.

No. 59. (7076.)

Jeremiah Wilcox et al.
v.
The State of Nebraska.

Douglas county. Contempt of court. Pending.

No. 60. (7048.)

Gus Head
v.
The State of Nebraska.

Dawson county. Assault to commit rape. Under advisement.

No. 61. (6931.)

Anton Berneker
v.
The State of Nebraska.

Douglas county. Receiving stolen goods. Affirmed.

No. 62. (6898.)

Edward Rosewater
v.
The State of Nebraska.

Douglas county. Contempt. Pending.

No. 63. (6887.)

John B. Walker
v.
The State of Nebraska.

Dawson county. Murder. Pending.

No. 64. (6872.)

W. D. Percival
v.
The State of Nebraska.

Douglas county. Contempt. Pending.

No. 65. (6854.)

Barney McGinn
v.
The State of Nebraska.

Douglas county. Murder. Pending.

No. 66. (6853.)

W. C. Coffield
v.
The State of Nebraska.

Douglas county. Forgery. Pending.

No. 67. (6772.)

Charles C. Carleton
v.
The State of Nebraska.

Dodge county. Murder. Under advisement.

No. 68. (6723.)

James Aiken
v.
The State of Nebraska.

Douglas county. Burglary. Affirmed.

No. 69. (6691.)

Theodore Gallegher
v.
The State of Nebraska.

Douglas county. Contempt. Pending.

No. 70. (6223.)

Jabe Dillon
v.
The State of Nebraska.

Furnas county. Assault with intent to kill. Affirmed.

No. 71. (4982.)

The State of Nebraska.
v.
W. J. Yates.

Fillmore county. Exceptions by county attorney. Overruled.

No. 72. (7079.)

David Zimmerman
v.
The State of Nebraska.

Furnas county. Contempt Pending on motion.

No. 73. (6495.)

The State of Nebraska
v.
Ezra M. Buswell.

Gage county. Exceptions filed by county attorney. Sustained.

No. 74. (4981.)

The State of Nebraska
v.
Wm. Hughes.

Gage county. Exceptions by county attorney. Overruled.

No. 75. (5158.)

M. L. Rawlings
v.
The State of Nebraska.

Gage county. Selling liquor without license. Affirmed.

No. 76. (5159.)

D. H. Noll
v.
The State of Nebraska.

Gage county. Selling liquor without license. Affirmed.

No. 77. (5895.)

Chas. Redfield
v.
The State of Nebraska.

Holt county. Rape. Affirmed.

No. 78. (4609.)

A. L. Haley
v.
The State of Nebraska.

Harlan county. Selling liquor without license. Affirmed.

No. 79. (5527.)

Cuyler Shultz
v.
The State of Nebraska.

Hall county. Murder and reversed. New trial. Convicted of murder in second degree. Sentenced to twenty years in penitentiary.

No. 80. (4205.)

William Rutherford
v.
The State of Nebraska.

Hall county. Arson. Reversed.

No. 81. (4978.)

Geo. Bedford
v.
The State of Nebraska.

Hall county. Bribery. Reversed.

No. 82. (6790.)

Albert Bartell
v.
The State of Nebraska.

Harlan county. Murder. Reversed.

No. 83. (5434).

Edward Dean
v.
The State of Nebraska.

Johnson county. Grand larceny. Affirmed

No. 84. (5652.)

Martin J. O'Grady
v.
The State of Nebraska.

Johnson county. Forgery. Reversed.

No. 85. (5995.)

James P. Palin
v.
The State of Nebraska.

Lancaster county. Rape. Reversed.

No. 86. (6143.)

Green S. Gravely
v.
The State of Nebraska.

Lancaster county. Murder. Reversed.

No. 87. (6088.)

The State of Nebraska
v.
J. Dan Lauer.

Lancaster county. Exceptions filed by county attorney. Overruled.

No. 88. (5646.)

R. W. Brady
v.
The State of Nebraska.

Lancaster county. Burglary. Reversed.

No. 89. (4461.)

John Taylor
v.
The State of Nebraska.

Lancaster county. Murder. Affirmed.

No. 90. (5435.)

The State of Nebraska
v.
Neriah B. Kendall et al.

Lancaster county. Exceptions by county attorney. Sustained.

No. 91. (5595.)

Howard W. Zink
v.
The State of Nebraska.

Lancaster county. Embezzlement. Affirmed.

No. 92. (5197.)

E. L. Rice
v.
The State of Nebraska.

Lancaster county. Assault. Affirmed.

No. 93. (5198.)

W. H. Sternberg
v.
The State of Nebraska.

Lancaster county. Assault. Affirmed.

No. 94. (5312.)

Chas. F. Hammond
v.
The State of Nebraska.

Lancaster county. Rape. Affirmed.

No. 95. (5367.)

Chas. A. Kaiser
v.
The State of Nebraska.

Lancaster county. Grand larceny. Reversed.

No. 96. (4462.)

Milo Hodgkins et al.
v.
The State of Nebraska.

Lancaster county. Assault and battery. Affirmed.

No. 97. (4516.)

T. E. Calvert et al.
v.
The State of Nebraska.

Lancaster county. Contempt. Reversed. Dismissed.

No. 98. (6928.)

C. W. Tracey
v.
The State of Nebraska.

Lancaster county. Robbery from person. Pending.

No. 99. (6916.)

Isaac Whitman
v.
The State of Nebraska.

Lancaster county. Burglary. Affirmed.

No. 100. (6913.)

Charles E. Dolan
v.
The State of Nebraska.

Lancaster county. Assault with intent to kill. Pending.

No. 101. (6849.)

Thomas O'Conner
v.
The State of Nebraska.

Lancaster county. Violation of state medical law. Pending.

No. 102. (7102.)

Michael McMahon
v.
The State of Nebraska.

Merrick county. Burglary and larceny. Pending on motion.

No. 103. (6807.)

Andrew Debney
v.
The State of Nebraska.

Nance county. Murder. Pending.

No. 104. (6774.)

Wm. Hall
v.
The State of Nebraska.

Nemaha county. Rape. Reversed.

No. 105. (6808.)

James Edmonds
v.
The State of Nebraska.

Otoe county. Grand larceny Reversed.

No. 106. (6802.)

Z. T. White
v.
The State of Nebraska.

Otoe county. Libel. Dismissed.

No. 107. (5574.)

Thomas Creasman
v.
The State of Nebraska.

Otoe county. Assault with intent to wound. Affirmed.

No. 108. (6679.)

Carl Korth
v.
The State of Nebraska.

Pierce county. Embezzlement. Pending.

No. 109. (5706.)

Michael Lamb
v.
The State of Nebraska.

Platte county. Grand larceny. Affirmed.

No. 110. (4976.)

Harriet Perry et al.
v.
The State of Nebraska.

Platte county. Keeping house of ill-fame. Affirmed.

No. 111. (5319.)

Charles Gartner
v.
The State of Nebraska.

Pawnee county. Assault. Dismissed.

No. 112. (7339.)

Harriet Wright
v.
The State of Nebraska.

Platte county. Keeping house of ill-fame. Pending.

No. 113. (6231.)

Gus Colen
v.
The State of Nebraska.

Saunders county. Grand larceny. Dismissed.

No. 114. (4972.)

Frank E. Shupe
v.
The State of Nebraska.

Saunders county. Assault and battery. Reversed.

No. 115. (5371.)

Henry W. Vallery
v.
The State of Nebraska.

Saunders county. Criminal libel. Affirmed.

No. 116. (4433.)

George S. Arnold
v.
The State of Nebraska.

Scott's Bluff county. Murder. Reversed.

No. 117. (4518.)

Thomas Bailey
v.
The State of Nebraska.

Seward county. Adultery. Reversed.

No. 118. (6755.)

Joseph Krchnavy
v.
The State of Nebraska.

Saunders county. Assault with intent to kill. Under advisement.

No. 119. (6738.)

James E. Murphy
v.
The State of Nebraska.

Seward county. Assault with intent to kill. Under advisement.

No. 120. (6815.)

John Clarke
v.
The State of Nebraska.

Webster county. Horse stealing. Reversed.

No. 121. (6814.)

Edward Zielke
v.
The State of Nebraska.

Wayne county. Selling liquor without license. Affirmed.

No. 122. (5012.)

John Carter
v.
The State of Nebraska.

Washington county. Grand larceny. Reversed.

No. 123. (6826.)

Arthur J. Dickson
v.
The State of Nebraska.

York county. Abortion. Pending.

No. 124. (6666.)

Lawrence Wagner et al.
v.
The State of Nebraska.

York county. Assault with intent to kill. Under advisement.

No. 125. (4591.)

Strant Richards
v.
The State of Nebraska.

York county. Rape. Reversed.

No. 126. (7209.)

James McCormick
v.
The State of Nebraska.

York county. Grand larceny. Under advisement.

No. 127. (6365.)

Geo. H. Smith
v.
The State of Nebraska.

Douglas county. Larceny. Dismissed. Pending on motion to reinstate.

No. 128. (6567.)

The State of Nebraska
v.
E. A. Peterson.

Furnas county. Exceptions filed by county attorney. Denied.

No. 129. (7277.)

Chas. Basye
v.
The State of Nebraska.

Saunders county. Murder in second degree. Pending.

IV. SCHEDULE "D."—ORIGINAL CASES.

No. 1. (5507.)

In re Reuben Newton. } Antelope county. Habeas corpus.

No. 2. (6955.)

Chas. W. Edgerton
v.
State, ex rel. V. O. Strickler. } Error. Douglas county. Pending.

No. 3. (6554.)

State of Nebraska, ex rel. Nelson F. Loy,
v.
W. L. Mote et al., Trustees of Allen. } Dixon county. Quo warranto. Pending.

No. 4. (6407.)

The State of Nebraska
v.
John E. Hill et al. } Douglas county. Error. Affirmed.

No. 5. (5283.)

State of Nebraska, ex rel. Attorney General,
v.
Christian Hartman et al.

Douglas county. Quo warranto.

No. 6. (5318.)

State of Nebraska, ex rel. Greeley County,
v.
Henry N. Milne.

Greeley county. Mandamus.

No. 7. (7370.)

Wm. Bowen
v.
The State et al.

Holt county. Error. Pending.

No. 8. (4160.)

State of Nebraska, ex rel. Shaffer,
v.
H. E. Bowman et al.

Harlan county. Mandamus.

No. 9. (6845.)

The Y. N. & S. R. R. Co.
v.
The State of Nebraska et al.

Error. Knox county. Pending.

No. 10. (7289.)

P. D. Sturdevant et al.
v.
John C. Allen, Secretary of State.

Lancaster county. Mandamus. Writ denied.

No. 11. (6741.)

Joseph Garneau, Jr., Commissioner General,
v.
Eugene Moore, Auditor of Public Accounts.

Lancaster county. Error. Affirmed.

No. 12. (5071.)

State of Nebraska, ex rel. Blanchard,
v.
Auditor of Public Accounts.

Lancaster county. Mandamus.

No. 13. (4068.)

Bermuda Beer
v.
The Governor et al.

Lancaster county. Injunction. Pending on rehearing.

No. 14. (3010.)

State of Nebraska, ex rel. Attorney General,
v.
A. & N. R. R. Co.

Lancaster county. Quo warranto. Writ denied. Action dismissed.

No. 15. (5822.)

State of Nebraska, ex rel. State Journal Company, v. The Governor and Auditor of Public Accounts.	Lancaster county. Mandamus. Writ denied.

No. 16. (7064.)

State, ex rel. G. H. Hastings, Attorney General, v. Cunningham R. Scott, Judge, Frank E. Moores, Clerk of District Court, and John Drexel, Sheriff.	Original mandamus. Writ issued.

No. 17. (6953.)

State, ex rel. Wm. Stull, et al. v. Joseph S. Bartley, State Treasurer.	Original mandamus. Writ allowed.

No. 18. (6952.)

The State of Nebraska v. John E. Hill et al.	Original. Action on official bond. Pending.

No. 19. (6801.)

In the matter of Application of Attorney General for Court to Make Rules to Govern Original Cases where the State is a Party.	

No. 20. (6795.)

C., B. & Q. R. R. Co. v. State of Nebraska, ex rel. State Board of Transportation.	Custer county. Error. Pending.

No. 21. (6711.)

The State of Nebraska, ex rel. Lorenzo Crounse, v. Joseph S. Bartley, State Treasurer	Original. Mandamus. Writ denied.

No. 22. (6709.)

The State of Nebraska, ex rel. First National Bank, Crete, v. Joseph S. Bartley, State Treasurer	Original. Mandamus. Writ allowed.

No. 23. (6562.)

Application of Barrett Scott for Writ of Habeas Corpus.	Writ denied.

No. 24. (6672.)

In re Supreme Court Commissioners.	Original. Held constitutional.

No. 25. (6535.)

State of Nebraska, ex rel. Anna E. Stewart, v. A. R. Humphrey, Commissioner of Public Lands and Buildings, et al.	Original. Mandamus. Pending.

No. 26. (6497.)

State of Nebraska, ex rel. M. C. Lee, v. A. R. Humphrey, Commissioner of Public Lands and Buildings.	Original. Mandamus. Pending.

No. 27. (6470.)

State of Nebraska, ex rel. Sayre, Treasurer Scott's Bluff County, v. Eugene Moore, Auditor of Public Accounts.	Original. Mandamus. Writ allowed.

No. 28. (6332.)

State of Nebraska, ex rel. Joseph Garneau, Jr., Commissioner General, v. Eugene Moore, Auditor of Public Accounts.	Original. Mandamus. Writ allowed.

No. 29. (6306.)

In re Board of Public Lands and Buildings.	Petition for construction of statute. Opinion filed.

No. 30. (6176.)

Application of Rubus Glotfelter for Writ of Habeas Corpus.	Writ denied.

No. 31. (6171.)

State of Nebraska, ex rel. Nelson C. Brock, v. Eugene Moore, Auditor of Public Accounts.	Original. Mandamus. Writ denied.

No. 32. (6169.)

State of Nebraska, ex rel. P. H. Barry, et al. v. Eugene Moore, Auditor of Public Accounts.	Original. Mandamus. Writ allowed.

No. 33. (6102.)

State of Nebraska, ex rel. Attorney General, v. Anton Hurt et al.	Quo warranto. Writ allowed.

No. 34. (6073.)

State of Nebraska, ex rel. J. S. Dales, Steward of University of Nebraska, v. Eugene Moore, Auditor of Public Accounts.	Original. Mandamus. Denied.

No. 35. (6067.)

State of Nebraska, ex rel. L. P. Maine, v. Lorenzo Crounse, Governor.	Original. Mandamus. Writ denied.

No. 36. (6035.)

Application of Fred Walsh for a Writ of Habeas Corpus.	Writ allowed.

No. 37. (6024.)

Application of Robert Dodson for Writ of Habeas Corpus.	Writ denied.

No. 38. (5968.)

In re Constitutionality of Section 1, chapter 50, Laws 1891.	Opinion filed.

No. 39. (5920.)

State of Nebraska, ex rel. Gorham F. Betts, v. Samuel McClay, Sheriff.	Application for writ of habeas corpus. Writ denied.

No. 40. (7248.)

E. M. Harington v. F. H. Conner, Receiver, et al.	Saline county. Error. Pending.

No. 41. (5323.)

Frederick Curtis, John Johnson, Frederick Hollingsworth, Owen P. White, and Kay Tarwater v. William Ebright, Superintendent; John C. Allen, Secretary of State; Geo. H. Hastings, Attorney General; A. R. Humphrey, Commissioner of Public Lands and Buildings, and J. S. Bartley, State Treasurer.	Docket No. 110. Injunction. Dissolved. Writ denied.

No. 42. (356.)

Canton Steel Roofing Co. et al. v. Christian Specht, Edward Gurske, Jos. S. Bartley, State Treasurer, Eugene Moore, Auditor of Public Accounts, and Western Cornice Mfg. Co.	Docket No. 40. Douglas county. Injunction. Demurrer filed for state treasurer and auditor. Demurrer sustained.

No. 43.

State of Nebraska, ex rel. Board of Transportation, v. U. P. R. W. Co. and B. & M. R. R. Co.	Colfax county. Mandamus to compel the respondents to comply with act of legislature of 1893, known as "Transfer Switch Law." Pending.

No. 44.

State of Nebraska, ex rel. Board of Transportation, v. S. C., O. & W. R. R. Co. and F., E. & M. V. R. R. Co.	Holt county. Mandamus to compel the respondents to comply with act of legislature of 1893, known as "Transfer Switch Law." Pending.

V. SCHEDULE "E."—OPINIONS AND COMMUNICATIONS ISSUED FROM THE LEGAL DEPARTMENT.

Salary of county clerk.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., January 18, 1893.

Hon. G. D. Pierce, County Attorney, Benkelman, Neb.

DEAR SIR: Your communication of the 14th inst. has been received and noted. You ask, "Is the county clerk entitled to receive pay for making tax lists over and above the $1,500 allowed him under section 3043? Is the county clerk entitled to receive pay for preparing assessment books, certifying to county commissioner's names and mileage of petit jurors, and issuing certificates of election, in addition to the fees allowed under the above named section?" And lastly you ask, "Is the county clerk entitled to receive pay in fees in an amount in excess of the sum of $1,500?"

Replying to your communication you will permit me to call your attention to the following: Section 3017, Consolidated Statutes of 1891, provides that in all counties the county clerk shall receive for preparing tax lists four cents per line, including footings and recapitulations, provided that no fee shall be paid to the county clerk in counties having 70,000 inhabitants and upwards for making said list. Section 3016 provides that the county clerk shall receive a fee of twenty-five cents for issuing certificates of election. The same section further provides for the performing of duties of clerk to the county commissioners and attending to the business of the county, and that such a salary per annum shall be paid by the county quarterly as the commissioners of the county shall allow, not exceeding the sum of $400. Section 3946 says that the county clerk shall cause such assessment books, and all blanks necessary to be used by the assessor in the assessment of real and personal property, to be in readiness for delivery to the assessor on or before the 1st day of April in each year, and for preparing assessment books the county commissioners shall pay such sums as shall seem to them just and equitable.

The Twenty-second Legislative Assembly passed an act entitled "An act to amend section 13*a* of chapter 28 of the Compiled Statutes of Nebraska, 1887, entitled 'Fees.'" It amended said section so as to read as follows: "All fees to be entered on the fee book and accounted for." (See chapter 26, Session Laws, 1891, page 262.) There is no doubt in my mind but what it was the intention of the legislature in making this amendment to include the fees in making the tax list for the county, and there is no doubt but what this amendment included all fees, and makes it necessary for the county clerks of the different counties to enter upon the fee book and account for in their settlements all fees of the office.

There is, however, a difference between a fee and a salary, and I am confident that the salary the board of county commissioners or supervisors pay the county clerk under section 3016 is compensation for extra services performed by the clerk as clerk of the board of commissioners or supervisors, and not as clerk of the county, and that the compensation for such services should not appear on the fee book. Again, I call your attention to the service that is rendered by the county clerk in preparing assessment books and blanks necessary to be used by the assessors in the assessment of real and personal property.

The statute, viz., section 3946, says that the county commissioners shall pay such sums as shall seem to them just and equitable. You will see that there is no fee provided here, but for a certain service that the law requires of the county clerk the statute provides the commissioners shall pay for these services such a compensation as is just and equitable. I am constrained to the opinion the amount paid by the board for this service should not appear on the fee book. Also, the amount of money the commissioners pay the county clerk for deputy hire of course forms no part of the $1,500. Aside, then, from the item found in section 3946, and the salary as clerk of the board of county commissioners and the amount allowed the clerk as deputy hire, my judgment is all other items are fees received by the county clerk, and, as such, should appear on the fee book and should be accounted for by the clerk in his settlement with the county commissioners or supervisors.

Trusting this fully answers your questions, I remain,

Your obedient servant, GEO. H. HASTINGS,

Attorney General.

Liability of state treasurer's bondsmen.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., January 26, 1893.

To the Honorable the Senate of the 23d Legislative Assembly of Nebraska.

GENTLEMEN: On the 24th inst. your honorable body adopted a resolution, which has just reached me, wherein my opinion is asked on the four following propositions:

1st. Whether or not the former state treasurer and his bondsmen are liable to the state of Nebraska for the money deposited in the Capital National Bank at Lincoln, Nebraska, by said ex-treasurer.

2d. Whether or not the present treasurer is liable upon his general bond as treasurer for the money deposited in said bank.

3d. Whether the only recourse of the state is upon the special bond given by said bank to the present state treasurer under the law passed at the last session of the legislature.

4th. What, if any, changes or amendments to the present law are necessary to properly protect the interests of the state in reference to the public funds.

I have examined the several questions so far as was possible in the limited time I have had since the resolution above referred to was brought to my notice, and reply thereto as follows:

Under the act of April 8, 1891, being chapter 50 of the Session Laws of 1891, page 347, state depositories are created for the deposit of state funds by the state treasurer. This act of the legislature has never been before our court of last resort for construction, nor has the constitutionality of the same been determined by the body. The act above referred to did not, as to state treasurers, go into effect until after the expiration of the term of office of Hon. J. E. Hill.

To your first inquiry I answer: Section 3092 of the Consolidated Statutes provides, among other things, that it shall be the duty of the state treasurer to receive and keep all moneys of the state not expressly required to be received and kept by some other person, and to account for and pay over all moneys received by him as such treasurer to his successor in office. I am informed that on the turning over of the office to his successor the outgoing state treasurer had a credit at the Capital National Bank; that in turning over the office this item was

turned over by the outgoing treasurer to the present state treasurer without the actual delivery of the money. If this be true, my conclusion is as follows: The outgoing treasurer had money in his hands that belonged to the state. His official bond, as well as the law, required him to turn over to his successor in office the money in his hands received as such treasurer. The turning over to his successor an evidence of indebtedness held by him against the Capital National Bank was not a substantial compliance with the terms of the statute, and his bond would still be held liable. This question, in substantially the same form as here presented, has been decided by our supreme court in an opinion rendered by Chief Justice Lake, in the case of the Board of County Commissioners of Cedar County v. Peter Jenal et al., at the January term of the court in 1883. It may be found in the 14th Nebraska, 254. In that case it was squarely held that the payment of money can be effectuated only by the delivery of that which by the law of the land is recognized as money; that in the collection, care, and disbursement of the revenues of the state certificates of deposit are not recognized at all by the law. The same principle has frequently been laid down in our own as well as other courts of last resort. It is the universal holding of the courts that a certificate of deposit, issued by a bank to a depositor upon his depositing money therein, is not money but a promise to pay money; an evidence of indebtedness. Hence to your first question I answer, my opinion is the bond is still liable.

To your second inquiry, I desire to say, if I am right in my conclusion as to your first inquiry, and it shall be held that the turning over of the item above referred to at the Capital National Bank was not a valid payment, such as is contemplated by our statutes, then, of course, it must follow that the bond of the incoming state treasurer would not be liable therefor. If, however, the contrary doctrine should obtain, and it should be declared that the turning over of the item to the incoming state treasurer, his acceptance of the same as payment, and the placing of the amount to his credit upon the books of the bank was, as between the retiring state treasurer and his successor, binding, in my opinion the state is still protected and the bond of the incoming treasurer would be liable.

Your third inquiry is already sufficiently answered. The bond given to the present state treasurer by the bank would be simply auxiliary to the bond of the retiring treasurer.

To your fourth inquiry, regarding suggestions to your honorable body as to the changes and amendments to be made in the law to properly protect the interests of the state in reference to the state funds, there should be several provisions added.

1st. The maximum rate of interest which the state should receive should be declared. It is a well known fact that the weaker banks are liable to offer a larger sum for the use of public funds than stronger and possibly more conservative banks would feel justified in doing. A state treasurer would lay himself liable to censure if he did not realize for the state as large a sum as possible from accretions to the money belonging to the state not needed for immediate use. Hence the tendency under the present law will be to get the state funds into those banks offering the largest premium therefor, and which are perhaps least able to meet their obligations.

2d. The present law does not provide that the sureties on a bond shall justify as to their financial soundness. This should be remedied, and a person falsely swearing to his financial condition should be made amenable to the criminal statute.

3d. The treasurer should be prohibited from depositing in any bank more than thirty, or at the outside fifty, per cent of the cash capital of said bank.

4th. The treasurer should be prohibited from placing in any bank more than one hundred thousand dollars, no matter what its cash capital may be.

5th. The state treasurer should publish quarterly, and at such other times as called upon by the governor, a full statement of the funds belonging to the state remaining in his hands subject to deposit, together with the name and location of each depository, and the amount of state funds in each.

6th. The act should be so amended as to clearly and definitely define what funds are to be deposited by the state treasurer.

7th. It might, and doubtless would, strengthen the undertaking if it were provided that the sureties thereon should be other than officers or directors of the bank for which they become surety.

8th. It would doubtless be wise to so amend section 5712, page 1145, of the Criminal Code so as to conform to the provisions of chapter 50, Session Laws of 1891.

These are all the changes in the law that now suggest themselves to

my mind that would add additional protection to the funds belonging to the state.

I remain your most obedient servant, GEO. H. HASTINGS,
Attorney General.

Right of secret society to conduct an insurance business.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., January 28, 1893.

Hon. Eugene Moore, Auditor of Public Accounts, Lincoln, Neb.

DEAR SIR: I have the honer to acknowledge the receipt of your communication bearing date January 27, 1893, in which you ask my opinion as to whether a society or association seeking admission into this state to transact business, under the provisions of chapter 18, Laws of 1887, must be a secret society, or otherwise.

Section 442, page 167, Consolidated Statutes of Nebraska, provides as follows: "That any secret society or association, the management and control of which is confined exclusively to the membership of any secret society or order heretofore organized, or which may hereafter be organized, which, in addition to the benevolent and fraternal features thereof, shall also issue certificates of indemnity calling for the payment of a certain sum known and defined, in case of the death, disability, or sickness of any of its members, to the wife, widow, orphan or orphans, or other persons dependent upon such members, shall be exempt from the provisions of chapter 25 of the Revised Statutes of 1866, of the territory, now state, of Nebraska, the same being chapter 16 of the Compiled Statutes of 1885; *Provided*, That such secret society or association as aforesaid shall comply with all the requirements of this act."

This section of the statute, in my opinion, was formed by the lawmakers for the express purpose of permitting members of a secret organization to form an association within their own organization, and issue certificates of indemnity to their own members, which must be confined, however, to their own fraternity or secret order. Hence, to your question, I answer: Any secret society or association, the management which is confined exclusively to the membership of any secret order or society, may issue certificates of indemnity, for the payment of a sum certain, in case of sickness, death, or disability of

any of its members, is exempt from the provisions of the statute regulating insurance companies, but they must in all cases comply with the provisions of chapter 18, Laws of 1887.

I remain, sir, your obedient servant, GEO. H. HASTINGS,
Attorney General.

House Roll No. 30.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., February 1, 1893.

Hon. Will M. Gifford, Member House of Representatives.

DEAR SIR: Your communication of the 31st has been received, and I note you ask if, in my opinion, the provisions of House Roll No. 30 are covered by and provided for in chapter 52, page 946, of the Consolidated Statutes, 1891 (Cobbey)? Replying you will permit me to say, where there is a special statute which provides for certain things and points out plainly a mode of enforcing its provisions, and there is also a general statute covering the same subject-matter, the special statute always prevails.

House Roll No. 30 provides that it is unlawful for lumber and coal dealers to combine, pool, and fix prices. Chapter 52 of the Consolidated Statutes provides it shall be a violation of the law for persons, associations, or corporations engaged in the manufacture and sale of any article of commerce or consumption to form any combination, or to enter into any agreement to fix prices. Chapter 52 of the statute is general in its nature. House Roll No. 30 is special, and seeks to regulate lumber and coal dealers only. Should House Roll No. 30 become a law, its provisions would not interfere with the enforcing of the requirements set forth in chapter 52. I am of the opinion that combinations, pools, and agreements as to prices of lumber and coal can better be prevented under House Roll No. 30, should it become a law, than under chapter 52. It requires officers, agents, clerks, directors, and all parties interested to appear and testify. It further provides for the production of books and papers and excludes the claim that testimony given might tend to criminate the party giving it. The provisions to enforce House Roll No. 30 are superior to those in chapter 52.

I am your obedient servant, GEO. H. HASTINGS,
Attorney General.

Salary of county superintendent of schools.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., February 16, 1893.

Hon. E. W. Harvey, County Attorney, Valentine, Neb.

DEAR SIR: Your communication of the 15th inst. received at this office and contents noted. Replying thereto permit me to say I find upon examination that section 3596, page 788, Consolidated Statutes, 1891 (Cobbey), provides as follows: "The county commissioners, or a majority of them present at the first regular session of each year, shall determine the compensation to be paid to the county superintendent, but such compensation shall not be less than twelve hundred dollars per annum in counties having a school population of five thousand or more; and not less than one thousand dollars per annum in counties having a school population of four thousand and less than five thousand; and not less than eight hundred dollars per annum in counties having a school population of three thousand and less than four thousand; and not less than five hundred dollars per annum in counties having a school population of two thousand and less than three thousand; and in counties having a school population less than two thousand, a per diem of not less than three and one-half dollars or more than five dollars for each day actually employed in the duties of his office. The number of days necessary for the duties of his office shall be determined by the county superintendent, but the number of days so employed shall not be less than the number of school districts in said county, and one day for each precinct thereof for the examination of teachers. The superintendent shall file in the office of county clerk a sworn statement of his account."

Upon a careful examination I am constrained to the opinion that what is defined by the legislature in this section as the minimum compensation in one case is the maximum in the case below. For instance, where a county has a school population of 3,000 and less than 4,000, the minimum compensation is $800 per annum; the maximum would be $1,000. In counties having a school population of less than 2,000, a per diem of not less than $3.50 or more than $5 for each day employed is provided. The intention of the legislature was evidently to prevent the board of supervisors or county commissioners from fixing a maximum greater than the minimum in the class next above. To

put a construction other than this upon this statute would provide that the board of county commissioners or supervisors could allow $3.50 or $5, or any other amount between these two sums, for any number of days a county superintendent might certify that he had been employed in the discharge of his duties as such county superintendent. It would therefore make it possible for a superintendent in a county where there are less than 2,000 school population to obtain a much larger sum of money for his compensation than could be obtained by county superintendents in counties having a much larger population, and having much more arduous duties to perform. I therefore conclude that in counties having a school population of less than 2,000 it is discretionary with the board of supervisors or county commissioners to allow a per diem of not less than $3.50 or more than $5 for each day actually employed, but that his compensation under the statute cannot exceed the sum of $500 per annum. Trusting this answers your question, I remain

Your obedient servant, GEO. H. HASTINGS,
Attorney General.

Duty of auditor to settle with delinquent county treasurer.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., February 14, 1893.

Hon. Eugene Moore, Auditor of Public Accounts, Lincoln, Neb.

SIR: Replying to your letter of this date pertaining to delinquent county treasurers permit me to say section 4064, page 878, Consolidated Statutes of Nebraska, provides as follows: "The treasurers of the several counties shall pay into the state treasury all funds in their hands belonging thereto on or before the 10th day of February and 10th day of October in each year, and at such other times as the state treasurer shall require, and the funds so paid in shall be the indentical state warrants, if any, received by the treasurer for payment of the taxes, or in coin, or in treasury notes of the United States."

Section 4066 provides as follows: "Any treasurer failing to pay into the state treasury the amount due the state on his account for state and other taxes, at the time or times required by this act, shall pay interest at the rate of ten per cent per annum from the time the same became due until the same is paid; and it shall be the duty of the

auditor to charge such interest to the account of every treasurer failing to pay at the time or times required by this act. In no case shall the auditor be permitted to remit such interest, unless satisfactory evidence from the county board is presented to him, showing, by official action taken by such board, lawful cause why the collector could not pay over, in part or in whole, the amount due on such treasurer's account with the state.

Section 4069 provides as follows: "Any county treasurer failing to make reports and payments hereinbefore required for five days after demand made as aforesaid, the auditor, or such other authorities or persons, may bring suit upon the bond."

Section 4072 provides as follows: "Upon the failure of any county treasurer to make settlement with the auditor, the auditor shall sue the treasurer and his sureties upon the bond of such treasurer, or sue the treasurer in such form as may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interests of the state."

You will observe, under the provisions of our statute, that county treasurers are required to pay into the state treasury all funds belonging to the state on or before February 10th and October 10th in each year, and at such other times as the state treasurer may require, and failing so to do the county treasurer is liable upon his bond for interest on such sum as he fails or neglects to pay over, at the rate of ten per cent per annum, from the time such sum should have been paid until payment thereof is made, and, in addition, the office of the county treasurer may be declared vacant by the county board. You will also observe that it is made your duty to bring suit against a delinquent treasurer and his sureties when such delinquency occurs.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Taxing costs when complaint is filed without probable cause.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., February 14, 1893.

Hon. J. S. West, County Judge, Benkelman, Neb.

DEAR SIR: Your communication of recent date has been received and contents noted. Replying thereto permit me to say that section 5949, page 1187 Consolidated Statutes, 1891 (Cobbey), provides as

follows: "Whenever the defendant shall be tried under the provisions of this chapter, and found guilty either by the magistrate or jury, or shall enter a plea of guilty, the court shall render judgment thereon, assessing such punishment either by fine or imprisonment, or both, as the nature of the case may require and the law permit; in such case the defendant shall, in addition to the fine or imprisonment, be adjudged to pay the costs and be committed to the county jail until the judgment be complied with. Whenever the defendant, tried under the provisions of this chapter, shall be acquitted, he shall be immediately discharged, and if the magistrate or jury trying the case shall state in the finding that the complaint was malicious and without probable cause, the magistrate shall enter judgment against the complainant for all costs that shall have accrued in the proceedings had upon such complaint, and shall commit such complainant to jail until such costs be paid, unless he shall execute a bond to the people of the state of Nebraska in double the amount thereof, with security, satisfactory to the justice, that he will pay such judgment within thirty days after the date of its rendition."

The court of last resort, in the case of the State of Nebraska v. Ensign, 11 Neb., page 529, holds that the legislature exceeds its authority, in that they had no power to enact a clause that provided for the complainant to be committed to jail until the costs were paid in a case tried under the provisions of the section above quoted, where the court or the jury make a finding that the complaint so filed was malicious, or without probable cause; but the court does not hold that the complainant is not liable for the costs in cases of this kind. In fact, it will be found on page 533 the opinion of the court is to the effect that if the trial court fails to require complainant to acknowledge himself liable for costs, or fails to require the complainant to give security for costs, the claim is merely a civil liability. It would, therefore, be collected as in other civil judgments. I am of the opinion, then, that where a complaint is filed, the case is tried, and the court or the jury find that the complaint was filed without probable cause, or that it was filed with malice, the costs should be taxed to the complainant, and an execution can be issued out of the court where the costs are taxed against the complainant. Trusting this covers the point raised by you,

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Funds in state treasury belonging to state university cannot be paid out by the treasurer until the legislature makes a specific appropriation.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., February 20, 1893.

Hon. J. S. Bartley, Treasurer of Nebraska, Lincoln, Neb.

DEAR SIR: Replying to your communication of this date relating to your authority to pay over certain moneys in your hands as state treasurer granted by the general government by an act of congress approved August 30, 1890, for the endowment and support of colleges, etc., chapter 52, Session Laws of 1891, provides: "That all moneys that now are or may hereafter be received by the state treasurer or other state officer in pursuance and by virtue of said act of congress are hereby specifically appropriated and set apart solely for the more complete endowment, support, and maintenance of the college for the benefit of agriculture and the mechanic arts now existing in this state under the provisions of an act of congress approved July 2, 1862, and designated by law as the 'Industrial College of the University of Nebraska,' and all of said moneys shall be immediately paid over by said treasurer to the authorities of said college without further warrant or authority than is contained herein."

The constitution of this state, section 22, article 3, provides as follows: "No allowance shall be made for the incidental expenses of any state officer except the same be made by general appropriation and upon an account specifying each item. No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued by the auditor thereon, and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The auditor shall, within sixty days after the adjournment of each session of the legislature, prepare and publish a full statement of all moneys expended at such session, specifying the amount of each item, and to whom and for what paid." This section of our constitution has been before our supreme court for construction many times. In the case of State, ex rel. Cline, v. Wallichs, 15 Neb., 609, in an opinion rendered by the present chief justice, it was held, in construing the section just quoted, a specific appropriation is one expressly providing funds for a particular purpose. There can be no implied

appropriation of money under our constitution, nor any claim audited, unless the items of the account are set out.

Again, the constitution provides: "No money shall be drawn from the treasury except on the presentation of a warrant issued by the auditor." The auditor can draw no warrant except upon a specific appropriation named in this connection. (See State, ex rel. James, v. Babcock, 22 Neb., 38.)

In the case of State, ex rel. McLean, v. Liedtke, 9 Neb., 468, in an opinion rendered by Cobb, J., you will find the following language: "Upon careful examination of the several acts of the legislature and constitutional provisions applicable to this question, we are forced to the conclusion that it was the intention of the legislature which passed the act of February 23, 1875, that all moneys belonging to the university fund then in the hands of the treasurer of the board of regents should not only be paid over to the state treasurer, but should thereupon be covered into the state treasury, and that thereafter all like funds, upon reaching the hands of the state treasurer, would, by force of law, be covered into the state treasury. It necessarily follows that no such funds, or any other funds once in the state treasury, can be drawn out except in pursuance of a specific appropriation."

In State, ex rel. Bessey, v. Babcock, 17 Neb., 610, it is held that in the absence of a specific appropriation the regents have no power to dispose of the endowment fund, and the rule laid down in State v. Liedtke is adhered to.

Whatever might be my own individual opinion in regard to the matter, I am constrained, under the decision of our own court of last resort, to hold that the money arising under the act of congress approved August 30, 1890, is paid by the general government as state treasurer, and that it is your duty to place the same in the state treasury; that the act of the legislature of this state, approved March 19, 1891, sets apart all such moneys now in your hands, or which shall hereafter come into your hands as treasurer from the source, for definite and specific objects set forth in the bill, but that you are not warranted in paying out the same until the legislature by specific appropriation authorizes you so to do.

I remain, sir, your obedient servant, GEO. H. HASTINGS,
Attorney General.

House Roll No. 175.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., February 20, 1893.

Hon. S. Fulton, Member House of Representatives.

DEAR SIR: Your communication of this date, together with House Roll No. 175, has been received by me and has been given my attention, and replying to your inquiry permit me to say I note the bill provides for a special tax, not to exceed five cents per acre, for the purpose of building and improving county roads and bridges. Upon investigation I find the court of last resort has said the levy of a tax must be by valuation. It is the value of the property which is to be ascertained, and no citizen can be compelled to pay a tax greater than in proportion to the value of his or her property. In view of this language of the court in construing the constitution, I am of the opinion House Roll No. 175 should provide for the levy of a tax in the regular manner, and in fixing the amount to be levied I beg leave to call your attention to section 870, page 253, Consolidated Statutes, 1891. I do this in order that in making the change, should the same be made, you will not exceed the limit now fixed for county taxes, or should you deem it necessary to fix an amount that would be greater than the limit now provided for in the section above quoted, you could in time prepare an amendment to such section.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Salary of chaplain of penitentiary.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 16, 1893.

Hon. W. D. Hull, House of Representatives, Lincoln, Neb.

DEAR SIR: To your question, "Can the salary of the chaplain of the penitentiary be raised by an act of the legislature from $300 to $900 per annum?" I answer, yes; provided, of course, such increase is authorized by an act of the legislature and receives the assent of the governor. If there is anything in the contract (which I have not had the time to examine) which only holds the prison contract liable to pay $300 per annum for services of a chaplain, then of course the state would simply have to pay the difference between the sum now

allowed and the sum you propose to pay by the terms of the bill you showed me.

I remain, yours truly, GEO. H. HASTINGS,
Attorney General.

Qualifications of an elector.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 3, 1893.

Hon. A. A. Kearney, County Attorney, Stanton, Neb.

DEAR SIR: Your communication of March 2d has been received at this office and contents noted. Replying thereto permit me to call your attention to section 1 of article 7, constitution of the state of Nebraska. It provides as follows: "Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, and in the county, precinct, or ward for the term provided by law shall be an elector: First, citizens of the United States; second, persons of foreign birth who shall have declared their intentions to become citizens conformably to the laws of the United States, on the subject of naturalization, at least thirty days prior to an election."

Section 1584 of the Consolidated Statutes of 1891 (Cobbey) provides: "Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, in the county forty days, and in the precinct, township, or ward ten days shall be an elector: First, citizens of the United States; second, persons of foreign birth who shall have declared their intentions to become citizens conformably to the laws of the United States, on the subject of naturalization, at least thirty days prior to an election."

Section 2882, Consolidated Statutes, 1891 (Cobbey), says: "All qualified electors of this state who shall have resided within the limits of any city of the second class, or village, for three months preceding any election therein, shall be entitled to vote at all city and village elections."

Upon careful examination I do not hesitate to say it is my opinion a person who has lived in a city coming under the provisions of section 2882 for the requisite time to become an elector in that city, who moves thirty days before election from one ward of the city to another

ward of the same city, is not only an elector, but is eligible to hold any elective office to which the qualified electors of the city may elect him.

I remain, yours truly, GEO. H. HASTINGS,
Attorney General.

Warrants drawn under prison contract.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 6, 1893.

Hon. Eugene Moore, Auditor of Public Accounts.

DEAR SIR: Your communication bearing date March 3 has been by me received, and in reply thereto you will permit me to say I note your statement of the act of the legislature approved March 2, 1887, entitled "An act to extend the contract leasing the penitentiary grounds and convict labor to C. W. Mosher, assignee of W. H. B. Stout," also for the bond that was then duly extended, approved, filed with the proper party, and now remains in full force and effect. I further note you say early in February, 1892, Mr. Mosher assigned a contract so held by him to W. H. Dorgan; that Mr. Dorgan has never filed a bond as by law provided; that the Board of Public Lands and Buildings has never recognized the assignment by Mr. Mosher to Mr. Dorgan; that, on the contrary, Mosher has continued to present his vouchers, and the same have been approved and warrants have been issued thereon by the Auditor of Public Accounts. Your question is, shall you continue to issue warrants to Mr. Mosher in payment of the obligations incurred by the state under the contract with him, or shall you issue them to Mr. Dorgan, or hold said warrants subject to the order of the receiver of the Capital National Bank, or of the courts, for distribution to creditors of Mr. Mosher?

Presuming your statement of the case to be correct, I have given the subject-matter of your communication careful attention, and I find no authority that will justify your issuing a warrant, to discharge the obligation arising under the above named contract, to any person other than to C. W. Mosher. If the assignment to Mr. Dorgan is not valid, and has not been recognized as complete, and he has neglected to comply with the requirements of the law, then you should not issue a warrant to him, under the contract named. To hold warrants subject

to the order of the receiver of the Capital National Bank, or of the court, would be to assume that of which in your esteemed favor you say you have no official knowledge. If, however, there remains in your mind a serious doubt as to the party or parties to whom the warrants above named should be issued, I would say the only way you can relieve yourself entirely of responsibility would be for a court of competent jurisdiction to direct you in the premises.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

An indictment defective, in that the words "A true bill" are not endorsed thereon, is not sufficient to cause requisition papers to issue.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 8, 1893.

Hon. Lorenzo Crounse, Governor.

DEAR SIR: Your communication of recent date, together with the papers from the governor of South Dakota in the matter of the requisition for Robert R. Dixon, have been received in this office and by me given careful consideration. Replying thereto I beg leave to say: Section 7233, Compiled Statutes of Dakota, provides that an indictment cannot be found without the concurrence of at least twelve grand Jurors. When so found it must be endorsed "A true bill," and the endorsement must be signed by the foreman of the grand jury. A similar provision in other states seems to have been held as mandatory. (See, in addition to authorities cited by Hon. H. M. Uttley, the 47th Mo., 274; 105 Mass., 469; 1 Bish., Crim. Pro., sec. 702.) A like requirement is found in our Criminal Code. Section 6035, page 1200, Consolidated Statutes 1891 (Cobbey), says at least twelve of the grand jurors must concur in the finding of an indictment; when so found the foreman shall endorse on such indictment the words, "A true bill," and subscribe his name thereto as foreman. The view taken of this question by the court of last resort in Nebraska will be found in Martin v. State, 30 Neb., page 507.

The indictment in the papers before you for your consideration would seem, from the copy set forth, to be defective, in that it has not been endorsed by the foreman of the grand jury finding the same "A true bill." An omission of this kind, I am constrained to believe,

would be deemed by the supreme court of our state as a fatal defect. I herewith hand you requisition papers.

I remain your most obedient servant,

GEO. H. HASTINGS,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 28, 1893.

Hon. Eugene Moore, Auditor Public Accounts.

DEAR SIR: I have the honor to acknowledge the receipt of your favor of yesterday, wherein you ask my opinion whether or not you can legally pay warrants out of the fund known as the fund for the building of a fire-proof library for the state university after March 31, 1893.

Section 19, article 3, of the constitution of the state of Nebraska provides as follows: "Each legislature shall make appropriations for the expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, and all appropriations shall end with such fiscal quarter. And whenever it is deemed necessary to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members elected to each house, and shall not exceed the amount of revenue authorized by law to be raised in such time. Bills making appropriations for the pay of members and officers of the legislature, and for the salaries of the officers of the government, shall contain no provision on any other subject." This section of the constitution was under consideration by our supreme court at the July term, 1887, and can be found in 22 Neb., at page 33, in the case of the State, ex rel. Bullock, v. Babcock, wherein it was held that the appropriations made by the legislature, where there is no provision limiting particular cases to a shorter period, extend to the end of the first fiscal quarter after the adjournment of the next regular session. In that case it was further held that where an appropriation was made by the legislature of 1885 for the purpose of sinking a well in the salt basin, and the legislature of 1887 adjourned *sine die* March 31, 1887, that the appropriation of 1885 continued in force until August 31, 1887. Applying the rule laid down in this case to the question propounded by you, I would say that in my opinion the appropriation made in 1891 does not lapse

until the end of the first fiscal quarter after the adjournment of the next regular session of that body. That being the case, you have the authority to legally draw warrants upon the fund named until the end of the fiscal quarter after the adjournment of the legislature, which is now in session, takes place.

I remain your obedient servant, GEO. H. HASTINGS.
Attorney General.

Manner of drawing warrants against World's Fair appropriation.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., May 1, 1893.

Hon. Eugene Moore, Auditor Public Accounts.

DEAR SIR: Your communication, under date of April 25, has been received by me. Replying thereto permit me to say I note your reference to House Roll No. 268, passed by the Twenty-third Legislative Assembly and approved by the governor, it being an act to provide for the appointment of a commissioner general and for the necessary expenses to be incurred in the presentation of the products, resources, and possibilities of the state of Nebraska at the World's Columbian Exposition to be held in Chicago. I note you ask, first, if it is necessary that the governor should sign and approve the vouchers drawn on the fund provided for in the above named measure. Second, if not necessary for him to sign all of the vouchers, shall he sign any of them, and if any, which ones? Third, under the provisions of the act, what is the amount appropriated and available?

Upon careful examination of the original act, my conclusion is, first, section 3 says that the appropriation provided for can be drawn from the treasury on estimates made by the commissioner general, and that no estimate shall exceed the sum of $5,000, except in case of emergency, and in case of an emergency approved, the estimate shall be made on the approval of the governor. From this it would seem the commissioner general has full power to cause a warrant to be drawn in any sum not to exceed $5,000. In case the estimate was for more than $5,000, it would then be necessary to have the certificate of the governor to establish the emergency. This conclusion, if adopted by you, answers your second question. As to the third question asked by you, it seems to have been the intention of the legislature to ap-

propriate $35,000 in addition to the amount already appropriated and yet unexpended for the purpose of making the exhibit at the exposition in Chicago. My opinion is that the language of the act is sufficient to justify the holding that after its passage and approval there was available the sum of $35,000, together with the unexpended portion of the moneys heretofore appropriated.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

State printing.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., May 11, 1893.

Hon. J. S. Bartley, President State Printing Board.

DEAR SIR: Your favor, under date May 4th, has been received by me. I note you ask if, in my opinion, the additional 1,000 copies of the report made by commissioner of labor, to be printed under the order made by the senate at its last session, should be printed by Messrs. Calhoun & Woodruff under the contract made and entered into on the 13th day of December, 1892, or should the printing board advertise for bids. Upon examination I find the resolution of the senate indicates that the reports should be printed in the regular manner and under the law governing state printing, and I also find that the bid made by Calhoun & Woodruff and the contract were based upon a notice and advertisement for bids, and provided that the contract should extend over a period of two years. The advertisement and notice were in due form. The contract was awarded to the lowest bidder in good faith and in the proper manner, and my opinion is that the contract is now in full force, and that Messrs. Calhoun & Woodruff should be permitted to print the additional 1,000 copies of the report of the commissioner of labor, provided for in the resolution, and that said work should be done under the contract now existing between them and the state. This, I believe, covers the question raised by your board.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Payment of claims by municipalities.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., May 29, 1893.

Hon. Lorenzo Crounse, Governor.

DEAR SIR: I herewith hand you copy of letter to his excellency the secretary of state, signed by the minister of Belgium, and letter to his excellency the governor of Nebraska, signed by the secretary of state. Together with these I hand you citations as to payment of claims by municipalities in this state, in cities of the first class of 25,000 population and over, and less than 100,000. This, as you know, governs the manner of the payment of claims by the city of Lincoln.

Appropriation bill, annual, section 2522, page 551, Consolidated Statutes, 1891 (Cobbey), claims.

Section 2578, page 550, claims.

When authorized to draw warrants, section 2524, page 552.

Warrants, section 2526, page 552.

I find upon examination, and after consulting with the proper authorities, the custom in the city of Lincoln is, when a person holds a claim against a city, that it is first presented in writing in the form of an itemized account. The claimant verifies the claim, setting forth that it is just, reasonable, due, and unpaid. This is filed with the city clerk. The city clerk, on the meeting of the council, submits the claim for consideration. The council approves the claim, allows the same and orders it paid. The city clerk thereupon draws a warrant for the amount approved. The provisions for the payment of claims above described, in the main, apply to municipalities in the state.

Upon examination I find that in metropolitan cities warrants are drawn by the comptroller upon the treasurer in conformity with section 2400, page 521. There is no provision in our statute requiring appropriations over municipal expenditures to be approved by a board composed of such citizens who pay the largest amount of taxes.

If you desire me to give this item any further attention please so indicate, and I will take pleasure in so doing without delay.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Fees for conveying persons under sentence to industrial schools.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., May 29, 1893.

Hon. Eugene Moore, Auditor Public Accounts.

DEAR SIR: Your communication of the 29th inst. has been received, and replying to the same permit me to say section 3504 Consolidated Statutes, 1891 (Cobbey), provides as follows: "Until further provisions are made, all proceedings, services of order, examinations, commitments, and other provisions necessary to give this act full force and effect shall be made and carried out in accordance with sections five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12) of chapter 75 of the Compiled Statutes of Nebraska, which said sections are hereby made a part of this act and shall therefore govern all commitments of girls who are fit subjects for an industrial school." Section 3491 of the same volume is section 7 referred to in section 3504. Section 3493 of the same volume reads as follows: "The judge shall certify in the warrant the place in which the boy or girl resided at the time of his or her arrest, also his or her age as near as can be ascertained, and command the said officer to take said boy or girl and deliver him or her without delay to the superintendent of said school, or other person in charge thereof, at the place where the same is located and established, and such certificate, for the purpose of this act, shall be conclusive evidence of his or her residence or age. Accompanying this warrant the judge shall transmit to the superintendent, by the officer executing it, a statement of the nature of the complaint, together with such other particulars concerning the boy or girl as the judge is able to ascertain; *Provided*, The expense of conveying any boy or girl so committed to said state industrial school, or of returning them to their parent or guardian after their release therefrom, shall be at the expense of the state." This section is section 9 referred to in section 3504, but the fees of the sheriff or other officer in this chapter are the same as are provided for under an act to provide for the erection of the penitentiary and for the care and custody of state prisoners found in sections 3449 to 3482 inclusive. In section 3473, page 769, of the Consolidated Statutes we find that "the expenses and legal fees of the sheriffs and other officers incurred in conveying convicts to the penitentiary shall be approved by the auditor of state, and paid out of the state treasury; said auditor may allow for said ex-

penses and fees the following rates: For sheriffs, three dollars per day; for each assistant or guard absolutely necessary, two dollars per day and ten cents per mile for traveling expenses in going and coming." It is under this section that the sheriff or other proper officer makes his charges for conveying convicts to the penitentiary and for conveying juvenile offenders to the industrial school at Kearney and Geneva. This section provides that the auditor may allow expenses for the sheriff and for each assistant or guard absolutely necessary.

I presume you have placed before me all the papers that are filed in your office in this case, and upon examination I do not find any showing whatever that there was an assistant or guard necessary to enable the sheriff of Dawes county to safely deliver Ada M. Murray into the custody of the superintendent of the girls' industrial school at Geneva. If she is a proper subject to be sentenced to that institution, the presumption is that no assistant was necessary, and I am constrained to the opinion you should decline to issue a warrant covering expenses and mileage of the guard or assistant. Enclosed I herewith hand you voucher.

Your obedient servant, GEO. H. HASTINGS,
Attorney General.

Law prohibits persons convicted of crimes in United States court from being confined in the Nebraska penitentiary.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., June 24, 1893.

Chas. O. Whedon, Lincoln, Neb.

DEAR SIR: Referring to your question to me this morning I desire to say I have examined the statutes of this state and find under the provisions of an act approved February 26, 1879, page 169, Session Laws, 1879, that the lessee of the penitentiary is authorized to receive persons convicted of crimes and sentenced to confinement by the courts of the United States; provided the reception and custody of such persons should not interfere with the comforts and safe-keeping of persons sentenced by the courts of this state; and provided further, "no such prisoner shall be received or retained in said penitentiary after January 1, 1884." This act was amended in 1883. (See Session Laws, 1883, page 320.) This amendment provides for the retention and custody of persons convicted of crime by the courts of the United

States until October 1, 1889, provided "no such prisoners other than those already therein incarcerated shall be received into said penitentiary after the passage of this act, nor shall the state of Nebraska be liable in any manner on account of the retaining of any such prisoners."

I am of the opinion, in view of the legislation had upon the subject, that it was the intention of the legislature to prohibit the receiving of persons convicted of crimes and sentenced to confinement by the courts of the United States into the penitentiary of this state from and after the taking effect of the act of the legislature above referred, approved March 1, 1883. I am unable to come to any other conclusion after an examination of the two acts above quoted. It is true that section 1 refers to the lessee of the state penitentiary and his authority to receive and retain in custody United States prisoners, but the proviso is, "no such prisoner shall be received into said penitentiary after the passage of this act."

I am, yours truly,

GEO. H. HASTINGS,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., June 27, 1893.

To the Hon. State Printing Board, Lincoln, Neb.

GENTLEMEN: I beg to acknowledge the receipt of your communication under date of June 26, 1893, in which you state that you are in doubt as to who should receive the contract for printing the Session Laws of 1893, and enclose a notice to bidders calling for sealed bids for printing the Session Laws, Supreme Court Reports, blanks, blank books, and circulars, also a schedule of bids received by you, and ask that I advise you at once as to whom the contract should be awarded.

Permit me to call your attention to chapter 51, page 943, of the Consolidated Statutes of Nebraska. Section 4422 provides that the auditor of public accounts, state treasurer, and secretary of state shall constitute a state printing board, and shall have general supervision over the matter of state printing. Section 4426 provides that it shall be the duty of the board to decide on the kind, style, and form, the amount of printed matter on a page, the kind and quality of paper, the size of type, the quality and style of binding, and all materials necessary for the publication of the laws, journals, etc., and also place samples and copy of work to be done on exhibition in the office of the

secretary of state, and all bids and contracts shall strictly conform thereto. I take it for granted that your board has, in accordance with the provisions of the statute above quoted, decided upon the style and form of the Session Laws contemplated, the amount of printed matter on a page, the kind and quality of paper, the size of type to be used, the quality and style of binding. Such being the case, and the bidders being advised fully as to the kind and quality of the work contemplated, your first inquiry should be whether or not the bids strictly conform thereto, as provided in section 4426 above noted. If they do, then it is the duty of the board to award the contract to the lowest responsible bidder. To ascertain this latter fact, under the peculiar wording of some of the bids I notice upon the schedule, will be a matter of computation, the data for making which this office has not been furnished. For instance, I observe one bidder proposes to print the Session Laws at $3.60 per page, and $20 complete. The "$20 complete" unquestionably refers to the 500 extra copies of the "Newberry Bill," mentioned in your printed notice in the paragraphs referring to the Session Laws as follows: "Printing and binding 6,000 copies of the Session Laws of 1893 and 500 copies of the 'Newberry Bill,' printed and bound separately with paper covers." Another bidder proposes to do the same work for $3.75 per page, including extra copies named; while yet another proposes to do the work for $3.60 per page, and $40 for 500 copies of the "Newberry Bill." You have but two questions to settle: First, what bids conform to the notice, and which are to be considered by the board? Second, which bid of those considered is most favorable to the state? It being your duty to procure this work to be done in manner and style agreed upon by you for the lowest price obtainable. Having settled the first of these questions, the other is a mere matter of computation. In the event all of the above bids are considered, the number of pages the Session Laws will contain will be a factor to be considered, and you should first definitely ascertain as near as possible the number of pages the Session Laws will contain, that a correct computation may be made, and the fact as to which bid is the most favorable to the state definitely determined.

I remain, gentlemen, your obedient servant,

GEO. H. HASTINGS,
Attorney General.

Appropriations for institute for feeble minded.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., July 11, 1893.

Hon. Eugene Moore, Auditor of Public Accounts, Lincoln, Neb.

DEAR SIR: Your communication of recent date has been received by me and contents noted. Replying to the same, I call your attention to the following: The Twenty-third Legislative Assembly passed an act known as House Roll No. 207, entitled "An act to make an appropriation for the current expenses of the state government for the years ending March 31st, 1894, and March 31st, 1895, and to pay miscellaneous items of indebtedness owing by the state of Nebraska. Part of section 1 of this act provides: "That the following sums, or so much thereof as may be necessary, are hereby appropriated out of any money in the state treasury not otherwise appropriated for the payment of the current expense of the state government for the years ending March 31st, 1894, and March 31st, 1895, and to pay miscellaneous items of indebtedness owing by the state of Nebraska." Among other state institutions provided for in a part of the same section of this bill is the institute for the feeble minded at Beatrice. This provision is as follows: "Institute for the feeble minded (at Beatrice), maintenance and employes' wages, $45,000; furniture and bedding, $2,000; fuel and lights, $12,000; office supplies, $500; school and industrial supplies, $1,000; amusements, $400; medicine, $500; library and periodicals, $100; tools, $100; cows and other stock, $200; repairs of laundry apparatus, $150; cooking apparatus, $150; paint and oils, $300; all moneys in the state treasury belonging to the institute for the feeble minded shall be applied in payment of the appropriation made in section 1 of this act for the institute for feeble minded at Beatrice, Nebraska, so far as the same may extend." Again, the Twenty-third Legislative Assembly passed an act known as House Roll No. 234, which is an act to provide for the payment of the salaries of the officers of the state government, hospital for the insane at Lincoln, hospital for the insane at Norfolk, asylum for the insane at Hastings, institute for the blind, deaf, and dumb, reform school at Kearney, reform school at Geneva, normal school at Peru, home for the friendless, institute for the feeble minded, state university, railroad commission, industrial home, and soldiers' and sailors' home. Among other salaries provided for in section 1 of this act are

the salaries of the officers and employes of the institute for the feebled minded at Beatrice. This provision is found to be in the following language: "Institute for the feeble minded to be from institute for feeble minded fund; salary of superintendent, $2,000, $4,000; salary of matron, $800, $1,600; salary of steward, $1,200, $2,400; salary of five teachers, $3,000, $6,000."

It will be seen that the legislature provides in House Roll No. 207 the appropriations for the institution are to be paid from any moneys in the state treasury not otherwise appropriated, and only provides that all money belonging to the institute for the feeble minded shall be applied in the payment of the appropriation made for the institute for the feeble minded in so far as the same may extend. In other words, if there is money in the state treasury at the present time belonging to the fund for the institution for the feeble minded at Beatrice, then the money of that fund now in the treasury would be properly used to meet the expense provided for in House Roll No. 207. If, however, there is no money in the state treasury belonging to the fund for the institute for the feeble minded, then paragraph one of section 1 and House Roll No. 207 would govern, and any money in the treasury not otherwise appropriated can be drawn against to meet the provisions of House Roll No. 207 for the institute for feeble minded.

As to House Roll No. 234, the legislature has there expressly provided that the salaries of the superintendent, the matron, the steward, and the five teachers employed in the institution shall be paid from the funds for the institute for the feeble minded at Beatrice.

In conclusion, I would say, after careful examination, I am constrained to the opinion that all appropriations made in House Roll No. 234 for the institute for the feeble minded must be paid out of the funds for this institution; that the legislature in House Roll No. 207 has provided that when there is no funds belonging to this institution in the treasury, the current expenses of the institution are to be made from any money in the state treasury not otherwise appropriated. Trusting that this fully answers the question you raise in this department,

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Home for the friendless.

OFFICE OF ATTORNEY GENERAL.

LINCOLN, NEB., July 19, 1893.

Hon. Lorenzo Crounse, Governor.

SIR: On behalf of the Board of Public Lands and Buildings, I desire to call your attention to the condition of affairs existing at the home for the friendless in Lincoln, Nebraska.

Chapter 52, Laws 1881, approved February 28, 1881, established the home for the friendless. Section 2 of the act provides that the home shall be under the supervision of the Board of Public Lands and Buildings. Section 4 provides that the government of said home shall be by and under the supervision of the Society of the Home for the Friendless; "*Provided*, That nothing herein contained shall be construed so as to prevent the board of public lands and buildings from establishing rules and regulations for the government of such home in any manner." The home for the friendless is a state institution, supported almost exclusively by appropriations made from the state treasury, and falls within the constitutional provision, in my opinion, found in section 19, article 5, of the constitution of this state, which provides as follows: "The commissioner of public lands and buildings, the secretary of state, and attorney general shall form a board, which shall have general supervision and control of all the buildings, grounds, and lands of the state, the state prison, asylums, and all other institutions thereof, except those for educational purposes; and shall perform such duties and be subject to such rules and regulations as may be prescribed by law." Under this section of the constitution the act of February 13, 1877, establishing a board of public lands and buildings and defining their duties, was passed. Section 1 of the act provides as follows: "That the board created by section 19 of article 5 of the constitution of the state of Nebraska, consisting of the commissioner of public lands and buildings, the secretary of state, treasurer, and attorney general of the state shall hereafter be known in law as the 'Board of Public Lands and Buildings of the state of Nebraska,' and shall have general supervision and control of all the public lands, lots, and grounds, and all institutions, buildings, and the grounds thereto, now owned or that may hereafter be acquired by the state, including the saline lands, together with all salt springs, the penitentiary lands, internal improvement lands and lots, as well as the

state capitol building and grounds, the state penitentiary and grounds, the state hospital for the insane and grounds, the asylum for the deaf and dumb and grounds, the asylum for the blind and grounds, and all other lands, lots, grounds, and buildings now belonging or hereafter acquired by the state; *Provided, however*, That all lands, lots, grounds, and buildings, or institutions set aside for and devoted to educational purposes, be and hereby are excepted from the provisions of this act."

Section 4 reads as follows: "The said board shall have power, under the restrictions of this act, to direct the general management of all the said institutions, and be responsible for the proper disbursement of the funds appropriated for their maintenance, and shall have reviewing power over the acts of the officers of such institutions, and shall, on the part of the state, at regular meetings as hereinafter directed, audit all accounts of such officers, including the accounts of the commissioner of public lands and buildings, except his salary." In this connection see, also, State, ex rel. Davis, v. Bacon, 6 Neb., 289, etc.

Section 10, article 5, of the constitution of the state of Nebraska provides as follows: "The governor shall nominate and by and with the advice and consent of the senate (expressed by a majority of all the senators elected, voting by yeas and nays) appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise by law or herein provided for; and no such officer shall be appointed or elected by the legislature."

No such appointment has as yet been made by the governor. The board desires that some responsible officer be named by you as superintendent of that institution; that such respondent be required to give a bond as in other cases, and take and subscribe to an official oath. It follows, therefore, that where neither the constitution nor the legislature has provided for a different method, the governor must appoint the officers of the state institutions. In my opinion, therefore, it devolves upon the governor to appoint the superintendent of the home for the friendless, and thus enable the board to have some responsible officer connected with the institution that will be under bond for the faithful performance of the duties of superintendent, to be governed by such rules as the board shall from time to time prescribe.

I remain, sir, your obedient servant,

GEO. H. HASTINGS,
Attorney General.

Sixty days' notice in savings banks.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August 14, 1893.

L. M. Bennett, Vice President, Care Omaha Savings Bank, Omaha, Nebraska.

DEAR SIR: Replying to your communication of this date, permit me to say that where a bank is entirely solvent and able to pay its debts there can be no objection to selling depositors' notes and mortgages and receiving therefor certificates of deposit issued by the bank or the cancellation of open book accounts. If the bank is insolvent, however, it would prefer creditors which the law always frowns upon.

Now, as to the right the bank has to demand sixty days' notice and enforce the same as to holders of open accounts, I have to say that that matter is a contract between depositors and the bank, giving the bank the right and authority to enforce the sixty days' notice whenever it so elects. I would say in this connection, however, that where the notice is posted that the sixty-day rule in all cases will be enforced, you should enforce it then as to all persons holding open accounts.

I have examined the statement which you have forwarded of your condition at close of business last Saturday, and will show same to the banking board.

I remain, yours truly, GEO. H. HASTINGS,
Attorney General.

Form of ballot.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., October 20, 1893.

Hon. C. B. Bigelow, County Attorney, Hastings, Neb.

DEAR SIR: Your communication of the 18th inst. has been received at this office and contents noted. Hon. W. P. McCreary, your county attorney, being absent from your county at the present time, I take pleasure in sending forward an answer to the question you raise in this department. After careful examination of the law covering the printing of ballots, and the placing of names thereon under the election law of this state, I have no doubt but what were the republican party to nominate A. B. as a candidate for an office, and another party, such as the democratic or independent parties, should endorse the nomination of the republican party, or should they place his name

before the convention and nominate him for the same position named by the republican party, he would then be entitled to have his name appear on the ticket or ballot in the following manner only:

A. B. Republican—Democrat,
or
A. B. Republican—Independent.

In other words, the name should appear on the ticket in one space only, but following the name in one space should appear the name of both parties endorsing or nominating the candidate.

Trusting this fully answers the question you raise, and believing that it will meet with the endorsement of the county attorney of your county,

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Requisition.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., December 8, 1893.

To His Excellency, Hon. Lorenzo Crounse, Governor.

SIR: I beg leave to acknowledge the receipt of your communication of this date covering a letter addressed to you, signed by S. S. Bishop, county attorney of Chase county, inquiring whether or not a requisition, presumably upon a governor of a foreign state, would be issued by you for the apprehension and return of a fugitive from justice who stands charged with violating the provisions of section 5797, being section 207 of the Criminal Code of this state. It has been, and, so far as my knowledge extends, still is, the invariable practice to issue requisitions only in cases where the fugitive stands charged with having committed a felony. If a person is properly charged under the provisions of section 207, he stands charged with having committed a felony, because the punishment, if convicted, might extend to imprisonment in the penitentiary not to exceed five years. True it is that the sentence might be imprisonment in the county jail for a term not exceeding six months, but the rule has been established in this state by the court of last resort that where the punishment may be imprisonment in the penitentiary the offense is a felony. For this reason I am of the opinion that in case a party stands charged with a violation of section 207 of our Criminal Code and is a fugitive from

justice, and has sought asylum within the borders of one of our sister states, and those facts were properly brought to your attention in the method pointed out by law, you would be justified in issuing your requisition for the fugitive, notwithstanding the fact that the punishment of the accused, if convicted, might be simply a jail sentence.

I remain, sir, your obedient servant,

GEO. H. HASTINGS,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., December 11, 1893.

Hon. G. D. Pierce, County Attorney, Benkelman, Neb.

DEAR SIR: Replying to yours of December 8th, permit me to say, section 3039, page 701, Consolidated Statutes, provides that the person making the report of the election to the county clerk shall receive the additional sum of five cents for each mile necessarily traveled. This follows immediately the fixing of $2 per day for each day's service actually rendered. I am of the opinion, therefore, that the party returning the poll books to the county clerk receives a per diem for that work of $2, and, in addition, the sum of five cents for each mile necessarily and actually traveled.

To your second inquiry I desire to say that section 3006 provides, among other things, that sheriffs shall receive for traveling expenses for each mile actually and necessarily traveled five cents, while section 2414 provides for the fees of sheriffs for transportation of patients to the insane asylum a per diem of $3 per day while actually employed and mileage the same as is allowed in other cases.

To your third inquiry, as to whether the sheriff is entitled to pay for copies of election notices, I would say I find no statute authorizing the same, nor do I understand that the sheriff makes any such copies. The law provides that the clerk shall make all notices and deliver them to the sheriffs, to be posted at least twenty days prior to the holding of an election. These are each and all originals, not copies.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

House Roll No 108. Chapter 22, Session Laws, 1893.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., December 12, 1893.

To the Honorable the Board of Educational Lands and Funds, Lincoln, Neb.

GENTLEMEN: On the 11th inst. you saw fit to refer to me the question of the constitutionality of chapter 22, Session Laws of 1893. I have given the matter careful consideration and beg to say that the act was known as House Roll No. 108, and, as the same now appears upon the Session Laws, its title is as follows: "An act to amend sections 5 and 6 of an act entitled 'An act to provide for the leasing of the saline lands belonging to the state of Nebraska,' approved April 5, 1889, being sections 3808 and 3810 of the Consolidated Statutes of Nebraska of 1891." Section 1 of the same act itself reads as follows: "That section 5 of an act entitled 'An act to provide for the leasing of the saline lands belonging to the state of Nebraska,' approved April 5th, 1889, being section 3809 of the Consolidated Statutes of Nebraska of 1891, be amended so as to read as follows:"

The trouble with the act, as will be observed, is that in the latter part of the title it purports to amend section 3808 of the Consolidated Statutes of Nebraska, but in the body of the act sections 3809 and 3810 are amended. You will observe, also, that the title of the act, like the act itself, refers to the sections of the Session Laws of 1889 sought to be amended, as well as to the act found in the Consolidated Statutes. The act sought to be amended is found on page 580, Session Laws, 1889, and all that portion of the title down to the words "being sections 3808" are apt and well chosen, and fairly and clearly indicates the sections as well as the act sought to be amended; but the figures 3808 are supplanted by the figures 3809 in the body of the bill, and are evidently a mistake, and the title, like the bill, should have read 3809. The question before us for decision is, does the title clearly and fairly express the subject of the bill, and does the discrepancy between the title and the bill render it unconstitutional, and in contravention to section 11, article 3, of the constitution? An examination into the history of the bill may enable us to arrive at a better understanding of the question. The bill was introduced by Mr. Cornish, January 17, 1893; its title was in every way correct and was as

follows: "A bill for an act to amend sections 5 and 6 of an act entitled 'An act providing for the leasing of the saline lands belonging to the state of Nebraska,' approved April 5, 1891." January 15th the bill was read a second time and referred to the committee on agriculture February 7th. The bill was reported back to the house by the committee with the recommendation that it be passed. February 27th the report of the committee was adopted and the bill ordered engrossed for a third reading. March 2d the committee on enrolled and engrossed bills reported the bill to the house correctly engrossed. March 6th the bill was put upon its passage and passed, sixty-six members voting "Aye" and nine voting "Nay." The bill was then sent to the senate, its title still being perfect and as introduced. On the 7th day of March it was read the first time, a second time March 8th, and referred to the committee on school lands. March 22d the bill was ordered engrossed for a third reading. March 30th the committee on engrossed and enrolled bills reported the bill correctly engrossed. April 7th the bill was read a third time and put upon its passage, twenty-six senators voting "Aye" and four "Nay." All this time the title had remained as when the bill was introduced. On April 8th the president of the senate signed the bill, and then for the first time by some means the latter portion of the title appeared to be 3808 instead of 3809. April 8th the bill was returned by the senate to the house with a correct title, the figures being 3809, and on the same day the committee on engrossed and enrolled bills reported the bill correctly enrolled, the title still being without fault, and was in that condition signed by the speaker. (See page 1124, House Journal.) The bill was also on that same day, as appears by the House Journal, presented to the governor for his signature in its original form and without error, but between the secretary's desk and the governor's office the change appears to have crept into it. The chief difficulty with the bill therefore seems to be that the president of the senate did not sign the bill as passed by both legislative bodies. In Cottrell v. State, 9 Neb., 125, the supreme court holds: "The failure of the presiding officer of the senate to sign a bill which was afterwards approved by the governor and which the journal of the senate shows passed the senate by a constitutional majority, does not affect the validity of the act." Again, in the case of the State, ex rel. Huff, v. McGilland, 81 Neb., 236, the court says: "The journals of each house were evi-

dently intended to furnish the public and the courts with the means of ascertaining what was actually done in each branch of the legislature. They are to be treated as authentic records of the proceedings, and the court may resort to them when the validity is questioned upon the ground of the failure of the legislature to observe a matter of substance in its passage for the purpose of ascertaining whether the constitutional provisions have been substantially complied with or not."

The history of the bill, above fully set forth, on its passage through the two branches of the legislature, I have gathered from the journals of the respective houses. You will notice, as before stated, the title to the bill, so far as it refers to the Session Laws of 1889, sections 5 and 6, is correct and properly refers to the sections sought to be amended. In the case of State v. Babcock, 23 Neb., 128, the court lays down the rule as follows: "An act will not be declared unconstitutional and void unless it is clearly so; and when an amendment is so distinctly pointed out that there is no difficulty in ascertaining to what chapter it was intended to apply, and it is germane to the title of the act amended, ordinarily it will be sustained."

While the matter is not without difficulty, I am of the opinion that the matter of the title is not a fatal objection to the bill, and that it is not rendered entirely unconstitutional and void.

I remain, gentlemen, your obedient servant,

GEO. H. HASTINGS,
Attorney General.

Poll tax.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., September 20, 1893.

Edward A. Baldt, Esq., Bingham, Neb.

DEAR SIR: In answer to your favor of the 16th inst. permit me to say, section 3977, page 858, Consolidated Statutes of Nebraska, provides as follows: "Every male inhabitant in each road district being over the age of twenty-one years and under the age of fifty years, except paupers, idiots, and lunatics, shall be assessed by the assessor to pay a labor tax of $3. Said tax may be paid in cash or commuted for in labor in the manner provided for in the act of roads." Persons living in cities or incorporated villages who are liable by the provisions of law regulating cities or villages to pay a poll or labor tax, or

work upon the streets thereof, shall not be assessed to pay the tax provided for in this section. Section 1917, page 424, same book, provides as follows: "That all pensioners of the United States shall be exempt from paying a poll tax or performing labor on any highway in this state." You will observe that the statute uses the word "inhabitant," not "citizen," nor elector, or even resident. I am of the opinion, therefore, unless you fall within the class of exempted persons named in one or the other of the sections above quoted, you are liable to pay or work the poll tax.

Yours truly,

GEO. H. HASTINGS.
Attorney General.

Duty of secretary of state to certify names of candidates for judges of the district court.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., October 6, 1893.

Hon. John C. Allen, Secretary of State.

DEAR SIR: Your request, bearing even date herewith, has been received by me and contents noted. Replying thereto permit me to say, section 4, chapter 24, Session Laws, 1891, provides that certificates of nomination of candidates for office to be filled by the voters of the entire state or any division or district greater than a county, including candidates for congress, shall be filed with the secretary of state. Section 9 of the same chapter provides that it is the duty of the secretary of state, immediately upon expiration of the time within which the certificates of nomination may be filed with him, to certify to the county clerk of each county, within which any of the voters may by law vote for the candidate or candidates named in the certificate, the name and description of each of such candidates, together with the other details mentioned in the certificate of nomination so filed with the secretary of state. It is clear, then, that it is the duty of the secretary of state to certify to the county clerk of each county in the state the names of the candidates for judge of the supreme court, and for candidates for regents of the state university. In my judgment, under the provisions of the section above quoted, it is also the duty of the secretary of state to certify to the county clerks of the counties composing judicial districts, where judges of the district court are to be elected, the name of the candidate or candidates named in the certifi-

cates of nomination for judges of the district court in said districts. Trusting this answers the questions you raise in this department,

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

County treasurer's fees.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., December 30, 1893.

H. G. Lindsey, County Attorney, Pawnee City, Neb.

DEAR SIR: Replying to your favor of 29th inst. permit me to say that section 8099 of the statute provides that the fiscal year shall commence on the 1st day of December of each year, and end on the 30th day of November in each year. This section is found in connection with the law concerning state treasurers. Section 3025 provides that each county treasurer shall receive for his services the following fees: On all moneys collected by him for each fiscal year, under $3,000, ten per cent; for all sums over $3,000 and under $5,000, four per cent; on all sums over $5,000, two per cent; on all sums collected, percentage shall be allowed but once; and in computing the amount collected for the purpose of charging percentage, all sums, from whatever fund derived, shall be included together, except the school funds, and on school funds a commission of one per cent. Like yourself, I find no law, aside from that relating to the fixing of the fiscal year, except section 3099 above quoted.

In the case of Moose v. The State, 49 Ark., 499, the law is laid down as follows: "What is the fiscal year? When does it begin and end? The law has nowhere defined the phrase, so far as I can find. The fiscal year, so far as it relates to the financial operation of the county, must mean the current year embraced between the dates of the collectors' annual settlements. These settlements are required to be made within ten days after the close of the sale of land for delinquent taxes, and then by the law in force this sale was fixed for the second Monday in April."

Section 4061 of the statute provides that the treasurer shall make a final settlement on his accounts on or before the 1st day of February in each year. The statute also provides that the county board shall examine the final settlement of the county treasurer, and shall make a certificate as to its correctness, if found to be correct. It is

clear to my mind there can be but two fiscal years during any one term of a county treasurer. That is to say, if the county treasurer has proceeded upon the hypothesis that his fiscal year began at the beginning of his term and has charged his fees accordingly, then it could not have been in contemplation of the legislature to have had a second fiscal year begin within that year, nor more than two fiscal years, as already stated, during any one term. I have not been able to discover that this question has ever before been raised, nor that it has been passed upon by our court of last resort. Hence, I am unable to give you anything except my opinion as to what that court would hold. I take it for granted that when your county treasurer assumed the duties of his office a settlement had been made with his predecessor, and that when he commenced the collection of moneys he assumed that the fiscal year began then. I gather that much from the statements contained in your letter. He has held his term of office for four years, consequently has had four fiscal years. If the court should hold that the fiscal year, as defined in the statute, pertain to county treasurers as well as state treasurers, then of course your treasurer should have charged only such fees as the law permitted from the time that he began his duties as treasurer until the first of the following December. From your letter I discover that this has not been done, so that it is quite evident the construction placed upon the law by the present incumbent was that, as to his fees at least, the fiscal year began with his term of office. The question you have raised has been decided in the minds of the county treasurers of the state of Nebraska, so far as I have been able to learn, in precisely the same way as your own treasurer decided it, without a single exception. There may be cases where a different rule has prevailed, but if there be, I have been unable to find it; that is, a fiscal year, so far as their fees were concerned, begun with the beginning of their office.

I remain, yours truly, GEO. H. HASTINGS,
Attorney General.

Paving bonds.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., January 2, 1894.

Hon. J. B. Van Dusen, City Attorney, South Omaha, Nebraska.

DEAR SIR: I have yours of the 1st inst. in which you take occa-

sion to say, that under the authority given to cities of the first class, South Omaha has issued fourteen bonds of $500 each to fund a like number of district paving bonds heretofore issued and past due; that these bonds have been duly registered in the auditor's office, but that the question has been raised whether or not the city of South Omaha has authority, under the provisions of subdivision 23 of section 68, article 2, chapter 13*a*, of the Compiled Statutes of 1893, to issue such refunding bonds. I have given the matter such attention as my time would permit, and find that said subdivision 23, above referred to, reads as follows: "To provide for issuing bonds for the purpose of funding any and all indebtedness now existing or hereafter created of the city, now due or to become due, floating indebtedness shall only be funded by authority of the vote of the people, but the mayor and city council may by two-thirds vote issue bonds to pay off any bonded debt, without a vote of the people, at a not higher rate than the debt." This section is found among the sections of the statute giving to the mayor and city council their authority. I take it that this section is valid and binding, and within the constitutional requirements. To your question, then, I will answer, if all of the preliminaries provided for by the statute have been complied with, the issuance of the bonds is valid and regular.

Yours truly, GEO. H. HASTINGS,
Attorney General.

Provision for the poor of a county.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., January 8, 1894.

Charles A. Munn, Ord, Neb.

DEAR SIR: Replying to yours of the 5th inst. permit me to call your attention to section 13, page 375, Compiled Statutes, 1893, which provides, among other things, that the electors present at the annual town meeting shall have power to direct the raising of money by taxation for the support of the poor within the town, provided that when the county board of any county shall have established a poor house, then the support of the poor shall be provided for by the county board and no taxes for that purpose shall be voted, except sufficient for temporary relief. That is among the enumerations of the powers of the electors of a township when the county is under town-

ship organization. Chapter 67, page 613, of the same statute provides for the care of paupers in the several counties of this state, and among the other provisions of the statute will be found the following: Said paupers shall receive such relief as his or her case may require, out of the county treasury, in the manner hereinafter provided. Justices of the peace, where no poor house has been established, are made the overseers of the poor for their respective towns, and section 6 provides that the overseers shall, at the regular session of the county board, make full report of their acts and doings, and return a list of all the poor in their respective precincts, and upon making such report it is the duty of the county board to issue their warrants or drafts for the payment of the expenses necessarily incurred by the overseers of the poor for supporting such poor persons. Section 77, page 687, of the same statute provides, upon the subject of the levy of taxes for county purposes, that in counties under township organization, for ordinary county revenue, including the support of the poor, not more than nine mills on the dollar, etc.

The statute, you will have observed, provides that after a county poor house is established the poor are to be charged to the county and cared for by the county. I find no prohibition from such a course in counties under township organization not having established a poor house. I am of the opinion, therefore, that a resolution made by your county board to that end would place the poor of the county under the county board, and the expense of maintaining them would be a legal county charge.

I remain, yours truly, GEO. H. HASTINGS,
Attorney General.

Building and loan associations.

OFFICE OF THE ATTORNEY GENERAL,
LINCOLN, NEB., January 13, 1894.

R. H. Townley, Clerk, Lincoln, Neb.

DEAR SIR: I beg to acknowledge the receipt of your communication of the 8th inst. concerning the authority of the State Banking Board to compel a building and loan association, regularly organized and doing business prior to the taking effect of the building and loan association law of 1891, to alter or amend its constitution and by-laws, when the same are in conflict with such act but which do not conflict

with any law in force at the time such building and loan association was organized, and whether or not the constitution and by-laws of such association so organized, together with a stock subscription thereof, constitute such a contract as is beyond the power of the legislature to impair or abridge. Replying thereto permit me to say that the regulation of banks, mills, loan associations, railroads, canal, toll bridges, etc., by the legislature of the state has been conceded for many years, and is a part of the existing powers conferred upon the legislature. The right to exercise the police power of the state gives the legislature the right to regulate and control loan and building associations as well as banks and other corporations. For that reason I am of the opinion that the act of 1891 is not obnoxious to the constitution, does not impair the validity of contract, and is valid and binding upon all the building and loan associations in the state of Nebraska, and that the banking board has authority to compel every such association doing business in this state to conform to the several provisions contained in the act. However, section 15, chapter 14 Session Laws, 1891, known as the "Building and Loan Association Act," provides as follows:

"Any association now organized in conformity to existing laws in this state, for the purposes set forth in section 1 of this act, which shall voluntarily comply with all the requirements of this act shall be entitled to all the benefits and privileges herein granted. Any such association now organized shall be required to comply with the provisions of this act in the following particulars: It shall, within ninety days after this act shall have become a law, file with the auditor of public accounts a certified copy of its articles of incorporation, constitution, and by-laws, shall make and publish reports in full compliance with section 10 hereof, shall be subject to examination in all respects as provided in section 12 hereof, and its affairs may be wound up in the manner provided in section 13 of this act, and before any amendment to either its articles of incorporation, constitution, or by-laws, hereafter made, shall become operative, a copy of such amendment shall be filed with the auditor of public accounts; and the auditor, together with the state treasurer and attorney general, shall examine the same, and if they or any two of them shall find that such amendment does not introduce any unjust and inequitable feature or provision, they or any two of them shall issue their certificate of approval and such amendment shall become valid. But if they or any two

of them withhold such certificate, such amendment shall be of no effect."

Any building and loan association which has complied with the provisions of that section has voluntarily accepted the terms and conditions of the act in all its parts and is amenable thereto, and, so far as such association is concerned, there can be no question whatever as to the power and authority of the banking board.

As to your second question, did the act of 1891 repeal any of the provisions of the act of February 18, 1873, upon the same subject, I desire to say that repeals by implication are not favored by our courts, and unless there be a clear, unquestioned repugnance between the provisions of the two acts, and unless there be a repeal in direct terms,—in my opinion such repeal was not made,—but the two acts must be construed together, giving each force, vitality, and effect.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Admission of pupils to industrial school.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., January 24, 1894.

Hon. John T. Mallalieu, Superintendent, Kearney, Neb.

DEAR SIR: I beg to acknowledge the receipt of your communication dated January 19, 1894, and replying thereto I desire to say in answer to your first question, "Must a boy be under the age of sixteen years at the time of committing an offense, as contemplated by the constitution and statute, in order to be committed to the state industrial school?": Section 5 of chapter 75, Compiled Statutes of Nebraska, revision of 1893, provides as follows: "When a girl or boy of sane mind under the age of eighteen years shall, in any court of record in this state, be found guilty of any crime except murder or manslaughter, committed under the age of sixteen years, or who, for want of proper parental care, is growing up in mendicancy and vagrancy, or is incorrigible, and complaint thereof is made and properly sustained, the court may, if in its opinion the accused is a proper subject therefor, instead of entering judgment, cause an order to be entered that said boy or girl be sent to the state industrial school, in pursuance of the provisions of this act, and a copy of said order, under the seal of said court, shall

be sufficient warrant for carrying said boy or girl to the school, and for his or her commitment to the custody of the superintendent thereof." While section 12, article 8, of the constitution of the state of Nebraska provides as follows: "The legislature may provide by law for the establishment of a school or schools for the safe keeping, education, employment, and reformation of all children under the age of sixteen years, who, for want of proper parental care or other cause, are growing up in mendicancy or crime."

You will observe that the constitutional provision is for the reformation and employment of all children under the age of sixteen years. The constitution being the fundamental law of this state, any statute that is in contravention thereof is null and void. I am therefore of the opinion that in order to justify the commitment of a person to the state industrial school the offense must have been committed prior to their reaching the age of sixteen years.

2d. Concerning your second question, I desire to say that in my opinion section 5 is a constitutional act, construed as I have above construed it. Therefore, to your second question I answer that the offense must have been committed prior to the time the person charged arrived at the age of sixteen years.

3d. To your third question I answer that if a boy commits an offense while he is under the age of sixteen years, and is not intercepted until after he shall have passed the age, still he can take advantage of the law in the same manner as though he were brought to trial immediately after the committing of the offense, provided he shall not have passed the age of eighteen years at the time of the trial.

4th. To your fourth interrogatory I desire to say that the order of commitment should give the age of the boy. Section 9 of chapter 75, above referred to, provides that the judge shall certify in the warrant of commitment the place in which the boy or girl resided at the time of his or her arrest, also his or her age, as near as can be learned, and such certificate shall be conclusive evidence of the facts therein recited. In other words, it is the duty of the court to ascertain, as near as may be, the age of the boy or girl, and his findings as to such fact is as conclusive as his finding as to any fact in any case that may be legally brought before him. You have the right, however, to refuse to accept a boy as an inmate of your institution where a commitment does not follow the statute and is irregular.

5th. To your fifth interrogatory I desire to say that when the order of commitment shows that the boy is between the age of sixteen and eighteen, but that he was under the age of sixteen at the time of committing the offense, you have no discretion, in my judgment, left you. It is your duty to receive him, provided of course the commitment is regular, and the crime alleged against such person be not murder or manslaughter.

6th. If the commitment papers fail to show any age, you have the right to withhold your receipt for the person until such irregularity can be corrected; and in the event the record should substantially disclose that the person sought to be committed came within the exception of section 5 of chapter 75, you still, in my opinion, would have the right to refuse to accept such person as an inmate of your institution.

7th. To your seventh inquiry I desire to say that section 5, above quoted, provides that when a boy or girl of sane mind, etc., the law contemplated in that section, in my opinion, that you shall have furnished you inmates only of a sane mind; but if you will notice section 13 of chapter 75, you will discover that authority is given the Board of Public Lands and Buildings to transfer all feeble-minded children, who have been or may hereafter be committed to your institution, to the Nebraska institute for the feeble-minded youths at Beatrice. For that reason I would say that while it is not contemplated you should have any but people of sane minds under your charge, yet the finding of a court that the boy was sane is as conclusive as the question of age, hereinbefore explained.

8th. If a boy be accepted and receipted for by you and it is subsequently ascertained that he is an imbecile, you should proceed under section 13 of chapter 75.

I trust I have made myself sufficiently plain. I desire to impress upon your mind that the finding of a court is valid and binding until reversed in manner provided by law. Therefore, you are to take the certificates of the different courts on the commitments as absolute and established facts.

I remain, yours very truly, GEO. H. HASTINGS,
Attorney General.

Redemption of bonds by county treasurer.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., January 27, 1894.

Hon. W. P. McCreary, County Attorney, Hastings, Neb.

DEAR SIR: Replying to yours of the 23d inst., permit me to say that, under the statute of this state, there can be no question but that the township treasurers must pay over each thirty days to the county treasurer, and the city or village treasurers, and to the school district treasurers all moneys collected by them. In a recent case found in the 35th Neb. the supreme court holds that where taxes are collected by a township treasurer and fees paid to him for the collection thereof the county treasurer is not entitled to receive his fees on the money so collected; that is say, commissions on collections are to be computed and paid but once.

As to the second matter of which you speak, viz., the application of the money arising from the sinking fund, provided for in section 4175, Cobbey's Statutes, permit me to say, the statute evidently intends that the county treasurer shall apply the money as to the payment of the interest upon the bonds, the residue to be invested, first, in redeeming the bonds in the county issuing the same; second, in purchasing the bonds of the state; and third, in purchasing the bonds of the United States. Under the conditions contained in that section there are no state and no United States bonds that can be purchased, I presume. All the state bonds are owned by the permanent school funds of this state. So United States bonds are upon the market in such a way that they could be bought by your county. Hence, the investment of your sinking fund must be in the way of redeeming county bonds issued by your county. I believe from an examination of the section that it was the intention of the legislature to put the sinking fund as it accumulates into the county treasury into some sort of securities. That would do one of two things, either stop the interest that would accumulate against the county, or to so invest it that the interest accumulating upon the investment so made would be an offset to the interest accumulating upon the bonded indebtedness of the county. I can see no just and sufficient grounds for presuming that the legislature intended to limit the redemption of bonds to a particular series of bonds for which a particular sinking fund was levied. In other words, if you have two or more sets of bonds issued by your county, and have

provided by a sinking fund for their payment at maturity, in my opinion your county would have a right, under the restrictions and conditions contained in the section, to redeem any of such bonds as you may be able to procure with the money thus raised, having in view at all times the maturity of each set of bonds, and making the necessary provisions for meeting the payment of them when they shall fall due. The only objection I can see to this course would be that confusion might arise, unless great care was exercised in the keeping of the records of the transaction.

I remain, yours truly,

GEO. H. HASTINGS,
Attorney General.

State Board of Agriculture a corporation.

ATTORNEY GENERAL'S OFFICE,
LINCOLN, NEB., February 2, 1894.

Judge M. L. Hayward, Nebraska City, Nebraska.

DEAR SIR: Your favor of the 23d of January reached me in due season. I have looked the matter up and have arrived at a conclusion that is satisfactory to my own mind. How it might strike the court, however, I do not know. It will be observed that the State Board of Agriculture was created in 1866, and was made a body corporate with perpetual succession. In 1879, by an act of the legislature, entitled "An act for the government, support, and maintenance of the State Board of Agriculture and State Historical Society," (Session Laws of 1879, page 396), the section creating the board and making it a body corporate, being section 8 of the act of 1866, together with numerous other sections, were repealed by the direct terms of the act approved February 25, 1879. In 1883 section 1 of the act of 1879 was amended. (See page 57, Session Laws of 1883.) This amendment, among other things, provides: "That the said board shall also have power at the annual meeting to locate the state fair for a period not exceeding five years at any one time or at any one place. The act of 1879, as amended by the act of 1883, has been before the supreme court on two occasions: The first time in the case of the State v. Otoe County, 10 Neb., 19. This case, however, throws no light upon the question in which you are interested. The last time in the case of State v. Robinson, 35 Neb., 401, in which the court takes occasion to say: "Agricultural societies are not corporations in the ordi-

nary sense of the term, but are agents of the state created for the purpose of assisting in promoting our most important industry." This language was used, however, in speaking of county agricultural societies. These county agricultural societies were created by the same act that created the state board in 1866 and, under the provision of section 4, were made bodies corporate, capable of suing and being sued, and of holding, in fee-simple, real estate, not to exceed eighty acres. Section 4 of the act of 1866 was repealed in direct terms by the act of 1875. The trouble with the act of 1875, in my opinion, consists in first having for its title "An act for the government, support, and maintenance of the State Board of Agriculture and the State Horticultural Societies," then proceeding to abolish the board, depriving it of its corporate rights, and repeal the section creating such board. In this the title is clearly misled. The title of the act is not broad enough under our constitution, in my opinion, to permit the determination of the State Board of Agriculture, and to deprive it of its corporate capacity, as the title of the act does not in any way mention any such attempt in the bill.

The *dicta* of the case I have called your attention to in 35th Neb. would seem to indicate that it was not intended by the court to give to agricultural societies corporate power, and that such would be the construction by the court of last resort. I am strongly inclined to the opinion, however, that the court did not have in mind at that time the State Board of Agriculture, and I do not presume the matter of the title of the bill, in the sense you have been considering it, was brought to the attention of the supreme court in that case. In my opinion, therefore, the State Board of Agriculture, as a board, is still a body corporate, can sue and be sued, and make such contracts as it has the authority, either expressed or implied, to make as restricted by the statute of this state.

I remain, yours very truly, GEO. H. HASTINGS,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., February 17, 1894.

Hon. A. R. Humphrey, Commissioner Public Lands and Buildings, Lincoln, Nebraska.

DEAR SIR: Your communication, under date of February 14, 1894,

covering the proposition of E. P. Hovey, agent of Adams county Nebraska, is at hand and carefully noted. You take occasion to say the question for my consideration is "Can the Board of Educational Lands and Funds legally accept the proposition made, and, upon payment of the amount of money designated in the within enclosed communication, cancel the bonds?" As I understand your question, you ask only for a determination of the question as to the legal right of the board to accept the proposition, and the money, and surrender the bonds.

Section 1, article 8, constitution of Nebraska, provides as follows: "The governor, secretary of state, treasurer, attorney general, and commissioner of public lands and buildings shall, under the direction of the legislature, constitute a board of commissioners for the sale, leasing, and general management of all lands and funds set apart for educational purposes, and for the investment of school funds, in such manner as may be prescribed by law."

Section 25, page 777, chapter 80, Compiled Statutes of Nebraska, following the above quoted section of the constitution, provides as follows: "The said board shall, at their regular meetings, make the necessary orders for the investment of the principal of the fund derived from the sale of said lands then in the treasury, but none of said funds shall be invested or loaned except on United States or state securities and registered county bonds; *Provided*, That when any state warrant issued in pursuance of an appropriation made by the legislature, and secured by the levy of a tax for its payment, shall be presented to the state treasurer for payment, and there shall not be money in the proper fund for the payment of said warrant, the state treasurer shall pay the amount due on said warrant from any funds in the state treasury belonging to the permanent school fund, and shall stamp and sign said warrant as provided in section eleven (11) of article two (2) of chapter eighty (80) of the Compiled Statutes of 1887."

Under the constitution and statute above quoted, it is my opinion that the Board of Educatioual Lands and Funds has the management of the permanent school funds belonging to the state, and can, if they see fit and deem it expedient, accept payment on bonds held by the state and belonging to such fund. The power to invest the funds and to manage the same carries with it the power to accept payment on their evidences of indebtedness, in my opinion, though such evidences

of indebtedness are not due by the terms thereof. Trusting the above is a full and explicit answer to your question,

I remain, sir, your obedient servant, GEO. H. HASTINGS,
Attorney General.

"Lloyds" insurance companies.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., February 25, 1894.

Hon. Eugene Moore, Auditor of Public Accounts.

DEAR SIR: Your communication of recent date has been noted by me. The question by you asked, viz., as to whether or not the so-called "Lloyds" (a kind of insurance organization) can legally transact business in this state, has been given careful attention and the result of the investigation is submitted to you. The claim of the "Lloyds" is that it has nothing to do with any state insurance department. Its claim is that it is not regulated by, nor is it under the control of, the insurance laws of the state. It will probably not be contended that a state has not full power to prescribe the conditions on which an insuranee business may be carried on in its limits by corporations, associations, or individuals. The intention of the legislature seems to have been to regulate and systematize the insurance business. It, therefore, has imposed upon the auditor of public accounts the duty of issuing certificates of authority and asking examination annually of all statements. It does not appear to have been the intention to require strict observances on the part of some companies of statutory provisions, and nothing whatever of others. On the contrary, it is manifest that the intention was for all insurance companies to comply with the law. The individuals forming the "Lloyds" do not seem to reside in this state. They reside in another state, and on the ancient Lloyd plan write business in Nebraska. An insurance company not incorporated under the laws of this state cannot, directly or indirectly, transact business in this state.

Section 400, Cobbey's Statutes, page 156, provides that the auditor shall issue his certificate of authority to do business in this state for such insurance companies as comply with the provisions of that section, but that he shall withhold his certificate from any company failing, neglecting, or refusing to comply with any of the provisions thereof.

Section 404, Cobbey's Statutes, page 178, provides as follows: "It shall not be lawful for any agent or agents or individuals to act for any insurance company or companies referred to in this act, directly or indirectly, in taking risks or in transacting business of insurance in this state, without procuring from the auditor of state a certificate of authority stating that such company has complied with all requirements of this act." So that unless the so-called "Lloyds" have complied with the provisions of the statute above cited and have procured your certificate, I am of the opinion that it is not entitled to transact business or write insurance in this state.

Again, permit me to call your attention to section 403, Cobbey's Statutes, page 157, which section provides as follows: "It shall not be lawful for any insurance company, association, or partnership, organized or associated for any of the purposes specified in this act, incorporated by or organized under the laws of any other state of the United States, or any foreign government, directly or indirectly, to take risks or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actual paid up capital, exclusive of any assets of any such company as shall be deposited in any other states or territories for the special benefit or security of the insured therein. Any such company desiring to transact any such business as aforesaid, by an agent or agents in this state, shall appoint one attorney in each county in which agencies are established, resident at the county seat, and shall file with the auditor of state a written instrument, duly signed and sealed, authorizing such attorney of such company to acknowledge service of process for and in behalf of such company in this state, consenting that such service of process, mesne or final, upon such attorney shall be taken and held as valid as if served upon the company according to the laws of this state or any other state, and waiving all claim or right of error by reason of such acknowledgment or service, and also a certified copy of their charter or deed of settlement, together with a statement under oath of the president or vice president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital, with a detailed statement of the facts and items as required from companies under the laws of this state as per section twenty hereof [400]. Such statement shall also show to the full satisfaction of the auditor of state that said

company has deposited in some one of the United States or territories a sum not less than twenty-five thousand dollars, for the special benefit or security of the insured therein, and shall file also a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by the liabilities as stated in section twenty of this act, to the extent of twenty per cent thereof, while such deficiency shall continue."

Have these several provisions of the law been complied with by the so-called "Lloyds"? If not, no authority exists for them, or any agent of theirs, to transact any insurance business within this state; and any person who acts as the agent of any such person, company, association, or organization renders himself liable to prosecution under the criminal statute.

Trusting I have made myself sufficiently clear, and that you will have no further difficulty in regard to this matter,

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Minor cannot hold the office of deputy county clerk.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 7, 1894.

Hon. J. S. Boyd, County Attorney, Oakdale, Neb.

DEAR SIR: The questions that you raise in this department, I will answer in their order.

First—Can a minor hold the office of deputy county clerk? The question to which this would seem to give rise is, can the county clerk of a county in this state be a minor? The deputy must act for and instead of his principal. His acts, when the law properly provides for the appointment of a deputy, are as valid and binding within the scope of his authority as are the acts of the county clerk. If the county clerk himself is, under the law of necessity, one who has reached his majority and is a legal resident and voter, the conclusion would seem to follow that the deputy who acts for and instead of the principal should also be a person who has reached his majority, and who is in every way qualified to perform the duties of county clerk as principal were he to have been elected. If, then, a minor cannot hold

the office of deputy county clerk, it is unnecessary to enter into a discussion as to his bond being a valid and binding obligation.

Second—If the county board pays the county clerk for making the tax books under section 3946, Compiled Statutes, it is paid by the county to the clerk as a part of the fees of the office, and under chapter 26, Session Laws, 1891, chapter 28 of the Compiled Statutes of 1887, section 1, was amended so as to read as follows: "All fees to be entered upon the fee book and accounted for." Where the county clerk is employed by the board of supervisors or county commissioners as the clerk of the said board, a provision is made to pay him a salary for his services as clerk of the board. This department has held that the salary so paid by the county to the county clerk for acting in the capacity of clerk of the board of supervisors or county commissioners is not a part of the fees of the county clerk's office, and therefore is not to be accounted for as such. The difference between fees and salary seems clearly and well defined, and the provision is for the payment of the salary to the county clerk for acting in a capacity other than the county clerk, viz., clerk of the board of supervisors or county commissioners.

Trusting I have made myself clear and have covered the points you raise in your communication of March 5th,

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Bonds for building county jail.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 12, 1894.

H. Whitmore, County Attorney, Franklin, Nebraska.

DEAR SIR: Replying to yours of March 10th, permit me to say that under the provisions of section 869, Consolidated Statutes of Nebraska, the county board has the right to provide a jail for the county at a cost not to exceed, however, $1,500, without submitting the question to the voters of their county. If a greater sum is sought to be appropriated for the purpose of building a jail than $1,500, such appropriation would not be lawful without first submitting the question to the voters of the county. Again, the county board cannot do indirectly that which they are directly forbidden to do. In other words, they cannot appropriate indirectly a greater sum than $1,500

in providing a county jail without first submitting the question to the legal voters of Franklin county. Your first inquiry, then, would be whether the appropriation for the jail exceeds the sum of $1,500. If it does, it cannot be made without a vote of the county. If it does not, then of course it can. The only trouble with your matter that I observe is the matter of the delinquent taxes, amounting, as you say, to $240. I do not know what condition the tax you speak of is proposed to be levied by the appropriation you name, but if the proposition contemplates the expenditure of more than $1,500 for the jail, then it falls within the letter of the statute, which forbids an appropriation exceeding the sum of $1,500.

To your second question I reply that the board can at its next meeting lawfully consider its action taken at a former meeting. Of course where contracts have been entered into and the position of other parties have changed, a question of damage might arise, but I have stated to you the principle.

I remain, yours very truly, GEO. H. HASTINGS,
Attorney General.

Salaries of employes, World's Fair.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 12, 1894.

Hon. Eugene Moore, Auditor of Public Accounts.

DEAR SIR: I beg to acknowledge the receipt of your communication of this date concerning your duties in the matter of the issuance of warrants for the salaries of the people employed by the commissioner general, and in reply thereto will say that in the case of Moore v. Garneau, lately pending in the supreme court, in which an opinion was filed by the honorable chief justice on the 6th day of March, 1894, in the syllabus of the opinion the chief justice takes occasion to say: "By virtue of chapter 41, Session Laws, 1893, the commissioner general for this state at the World's Columbian Exposition, appointed under and in pursuance of said act, possessed the power or authority to contract for and purchase all property as well as employ all labor necessary for the successful presentation of the products, resources, and possibilities of this state at said exposition, and the state, in the absence of a showing of collusion or fraud, is liable to the person performing such labor, or furnishing said property, at the price stipulated therefor

in the express contract entered into with the commissioner general." The syllabus of a case is considered the binding part of the opinion, and that which points out the law upon the several propositions desired. You will observe that in the syllabus above quoted the chief justice takes occasion to say that in the absence of a showing of collusion or fraud the state will be liable to the person performing the labor such sum as the price stipulated for in the express contract entered into with the commissioner general. Your inquiry then should be directed as to whether there is in the several cases you name collusion or fraud. That question being answered in the negative, then as to what the contract was and the party performing the work, in the absence of collusion and fraud, under the opinion from which I have quoted, would, in my opinion, be entitled to receive at your hands warrants to the amount of the contract price agreed to in the contract with the commissioner general for their services.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Fees of county treasurer.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 12, 1894.

Hon. B. F. Gilman, County Attorney, Hemingford, Neb.

DEAR SIR: Your favor of March 8th has been received and contents noted. Replying thereto permit me to say, section 3025, Cobbey's Consolidated Statutes, 1891, provides that each county treasurer shall receive for his services the following fees on all moneys collected by him for each fiscal year: Under $3,000, ten per cent; for all sums over $3,000 and under $5,000, four per cent; on all sums collected, percentage shall be allowed but once; and in computing the amount collected for the purpose of charging percentage, all sums, from whatever fund derived, shall be included together, except the school fund. My opinion is, after having carefully examined the language of the statute, that the amount of money collected by the county treasurer for the state, and the amount collected for the county, should be computed together, and that thereupon the county treasurer should be entitled to the ten per cent on the first $3,000 of the aggregate amount, four per cent on the next $2,000, and two per cent on all the remaining amounts other than the school fund. I am constrained to the opinion

that the county treasurer would not be entitled to ten per cent on the first $3,000 of county funds and four per cent on the next $2,000 of county money, and then ten per cent on the first $3,000 of state moneys and four per cent on the next $2,000, but that the state funds and the county funds should be taken together, and the commission allowed by law be computed on the aggregate sum. Trusting this covers the questions you raise,

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

The right of students to vote at the place where attending school.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 12, 1894.

W. B. Hayden, Esq., Fairfield, Neb.

DEAR SIR: I have your favor of the 12th inst. concerning the right to students to vote at a general or special election, and in reply thereto will say that section 1, article 7, of the constitution of the state of Nebraska provides as follows: "Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, and in the county, precinct, or ward for the term provided by law, shall be an elector: First, citizens of the United States. Second, persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States, on the subject of naturalization, at least thirty days prior to an election."

Section 32, page 456, Compiled Statutes of Nebraska, revision of 1893, defines the word "residence" as applied to electors within the state of Nebraska, and provides as follows: "The judges of election, or in cities of the first and second class the registrars of voters, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as the same may be applicable: First—That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning. Second—A person shall not be considered or held to have lost his residence who shall leave his home and go into another territory or state, or county of this state, for

temporary purposes merely, with the intention of returning; *Provided*, That six months' consecutive residence in this state shall be necessary to establish a residence within the meaning of this chapter. Third—A person shall not be considered and held to have acquired a residence in any county of this state into which he shall have come for temporary purposes merely without the intention of making it his residence. Fourth—If a person remove to another territory or state, intending to make it his permanent residence, he shall be considered and held to have lost his residence in this state. Fifth—If a person remove to another state or territory, intending to remain there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may intend to return at some future period. Sixth—The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment only, or for transient purposes, it shall be otherwise. Seventh—If a married man have his family fixed in one place, and he does business in another, the former shall be considered and held to be the place of his residence. Eighth—The mere intention to acquire a new residence, without the fact of removal, shall avail nothing, nor shall the fact of removal, without intention. Ninth—If a person shall go into another territory or state, and while there shall exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state."

Again, if you will notice section 29, page 455, of the same statutes you will discover that when a person is challenged on the ground that he is not a resident of the county, precinct, township, or ward where he offers to vote, the following questions shall be propounded to him: 1st. Whether he has resided in the county forty days last past. 2d. Whether he has resided in the precinct or ward for ten days last past. 3d. When he last came into the county. 4th. When he came into the county was it for temporary purposes only, or for the purpose of making it his home? That is to say, his permanent home.

True it is that every person falling within the constitutional provisions above quoted has the right to cast one vote and have that vote counted, but he has the right to cast that vote only at one place, and that place his home. The same rule exactly applies to students in a college as to every other individual. They have the same right to

vote as other people; no greater, no less; but they can only vote in the county, precinct, or ward of their actual *bona fide* residence. In other words, if a student leaves his home to attend a college, going there for temporary purposes only, expecting to return when his course shall be complete, such a residence does not and will not make him a voter at the place where he is attending college, but, on the other hand, if he be a *bona fide* resident of the town in which the college is located, and in which he is a student, then he is a voter at such place. I have quoted the law and the constitution concerning the subject of electors at length for the purpose of making myself clearly understood, and trust you will have no difficulty in the matter.

I remain, yours truly, GEO. H. HASTINGS,
Attorney General.

Mutual insurance companies.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 16, 1894.

Hon. Eugene Moore, Auditor of Public Accounts, Lincoln, Neb.

SIR: I beg to acknowledge the receipt of your communication of the 15th inst. covering a letter from P. O. Chindgren, secretary of the Scandinavian Mutual Insurance Company of Polk county, Nebraska, which is herewith returned. I shall answer the several questions that have been propounded to you by Mr. Chindgren in the same order in which they have been asked.

1st. Section 419, page 161, Consolidated Statutes of Nebraska, provides as follows: "Nothing in this act shall be so construed as to prevent any number of persons from making mutual pledges and giving valid obligations to each other for their own insurance from loss by fire, lightning, tornadoes, cyclones, wind storms, hail or death; but such association of persons shall in no case insure any property not owned by one of their number, and no life except that of their own number, nor shall the provisions of this act be applicable to such association, or companies; *Provided*, Such associations or companies shall receive no premiums, make no dividends, or pay in any case more than two (2) dollars per day to any of their officers for compensation, and then only when actually employed for the association or company, nor shall they hire any agents or solicitors; *Provided further*, That no such company or association shall ever make any levies or collect any money

from its members, except to pay for losses on property or lives insured, and such expenses as are herein provided for." Among the provisions of that section you will observe the following: "Nothing in this act [meaning of course the statute regulating insurance companies doing business in the state of Nebraska] shall be so construed as to prevent any number of persons from making mutual pledges and giving valid obligations to each other for their own insurance," etc. The term "valid obligations," as used in the statute, implies binding obligations; obligations which have a legal and binding force and ones that can be enforced if occasion requires. As the statute expressly authorizes the giving of such an obligation, in my opinion a mutual insurance company, organized under the section of the statute I have quoted above, has the right to exact from its members a non-negotiable promissory note of one per cent of the amount he has insured, and a security for the fullfillment of his pledge or obligation to bear his proportionate share of the loss, should one occur to any of the members, provided of course the giving of such note is provided for by the by-laws of the company with such conditions as are named in Mr. Chindgren's letter.

2d. To the question what constitutes mutual pledges and valid obligations under the section of the statute above quoted, I answer: Any pledge, promise, obligation, or other evidence of a mutual obligation and contract, that may be mutually agreed upon by and between the members of the organization, which is provided for by the by-laws, and which is within the scope of authority given by the section of the statute, and is not forbidden thereby, would fall within the meaning of the statute. As before stated, these mutual pledges and obligations may be evidenced by such written obligations as may be provided for by the by-laws, always preserving, however, the mutual character of the same, and making them only enforceable after a loss shall have occurred, and then only for the *pro rata* share of the person giving such an obligation.

3d. The statute explicitly forbids the making of any levies, or the collection of any money from its members, except to pay for losses, and such expenses as are in section 419 provided for. These expenses are limited, as you will observe, to pay off its officers at a rate not to exceed $2 per day while actually employed for the company. I can see no objection to the charging of a membership fee, such fee going

toward paying the legal and necessary expense incurred in the management of the affairs of the company. In case the amount from this source accumulates, it should be deposited with your treasurer, there to remain until a loss occurs, or some other use, such as is contemplated by the statute, occurs for its use. In my opinion, there is no authority to levy any assessment upon the members of a mutual company, except to pay for losses incurred, and to pay the officers their per diem as hereinbefore stated.

In conclusion, permit me to say that section 419, page 161, above referred to, is a valid and subsisting part of the law of this state. The section has not been repealed, and mutual insurance companies organized under that law are legal and lawful bodies, and are fully authorized to transact insurance among their own members, on the conditions and under the restrictions therein contained.

I remain, sir, your obedient servant,

GEO. H. HASTINGS,
Attorney General.

Registration of voters.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., March 17, 1894.

R. St. Clair, Esq., Holdrege, Neb.

DEAR SIR: Replying to your favor of the 15th inst. permit me to say that section 1, chapter 76, Compiled Statutes of Nebraska, provides for the registration of voters in all cities of the first class and in all cities in the state having more than 2,500 inhabitants. I take it for granted that the school district of which you speak comprises the city of Holdrege, and more or less territory lying outside of the corporate limits of that city, and your question is as to the registration of the voters of the city. I hand you herewith a copy of the school laws of this state, and if you will kindly turn to subdivision 14, entitled "Schools in Cities," you will discover that the election for school officers, while it takes place at the same time as the city election, it is a separate and distinct election therefrom. Following the *dicta* in the case of Peard v. State, 34 Neb., 372, you will find that it is not within the power of the board of county commissioners to disfranchise legal voters, by subdividing a county for election purposes in such a manner as to leave them without an opportunity to participate in the election

of officers, and that every legal voter has the right to exercise his right of franchise, which must not be denied him. While the law contemplates the registration of voters in all cities in the state having more than 2,500 people, yet where the school district lies partially within and partially outside the corporate limits of such a city, the law must not be so construed as to disfranchise any voter at the school election that is a resident of the district, whether he resides within or outside the limits of the city. To your question then I would answer, that for the purposes of the school election in the school district you have named, and for school purposes, it matters not whether the voters be registered, or otherwise, if they are legal voters at the school election, and the ballots must be received and counted. A registration of the voters of the school district would be a mere farce, for the reason that a part of them would be registered, another part would be omitted. A registration is valued only for the purpose of preventing frauds, and to be of any utility whatever must be full and complete. There is no authority in the statute that I have been able to find providing for the registration of voters outside the limits of the city. Hence, I conclude there can be no registration of the voters of your school district which reside outside the limits of your city. That being so, I can see no particular result that can arise from the registration of the voters at the school election that reside within the city. I have been speaking entirely as to school elections. Of course, the legal voters of the city for the purpose of elections in general must be registered.

I remain, yours truly; GEO. H. HASTINGS,

Attorney General.

OFFICE OF ATTORNEY GENERAL,

LINCOLN, NEB., March 22, 1894.

Charles McCloud, County Treasurer Examiner, Omaha, Nebraska.

DEAR SIR: I am just in receipt of your communication submitting to this office the questions, first, is the county treasurer of a county entitled to a percentage or commission on the money received by him from the state treasurer, known as state apportionment? To that question I answer, No. Section 3025, Cobbey's Statutes, provides, among other things, that each county treasurer shall receive for his services the following fees: On all moneys collected by him for each fiscal year, etc. One of the recognized rules of construction of stat-

utes is that force, validity, and effect must be given to each part of the law when the same can be done. Following this rule, and giving force and vitality to the words "collected by him," leads me to the conclusion above.

To your second question, is a collector of delinquent taxes entitled to a commission of three per cent in addition to his fees for making the service, mileage, etc., under a distress warrant where no levy is made? To which I answer, No. Section 3988 of Cobbey's Statutes provides, among other things, that the treasurer shall be entitled to the same fees for his services as are allowed by law for selling property under execution. The question has been before the supreme court of this state and has been there decided. In the case of Thomas Kane, Treasurer of Cheyenne County, v. The U. P. Railroad Co., it was held that a mere levy and payment made without sale would not entitle the county treasurer to the penalty prescribed in the section to which I have above alluded.

Trusting the above fully answers both of your questions,

I remain your obedient servant, GEO. H. HASTINGS,

Attorney General.

Settlement between county officers and county board of commissioners.

OFFICE OF ATTORNEY GENERAL,

LINCOLN, NEB., May 31, 1894.

Hon. L. S. Hastings, County Attorney, David City, Neb.

DEAR SIR: Your favor of some days ago to this department has been carefully examined by me. Replying permit me to say, I note that your proposition is, the county board paid a certain sum of money to the county clerk for making duplicate tax lists. Subsequently to the expiration of the clerk's term of office an accountant, employed for the purpose of examining the clerk's books, found that some $1,200 had been improperly allowed by said board to the said clerk. Your position is, can the county recover said amount from said clerk and his bondsmen? If your communication states all the facts, and I assume that it does, is it not a fact that section 37, page 351, Compiled Statutes, 1893, applies? It is as follows: "Before any claim against a county is audited and allowed, the claimant, or his agent, shall verify the same by his affidavit, stating that the several items therein men-

tioned are just and true, and the services charged therein, or articles furnished, as the case may be, were rendered or furnished as therein charged, and that the amount claimed is due and unpaid, after allowing just credits. All claims against a county must be filed with the county clerk. And when the claim of any person against a county is disallowed, in whole or in part, by the county board, such person may appeal from the decision of the board to the district court of the same county, by causing a written notice to be served on the county clerk, within twenty days after making such decision, and executing a bond to such county with sufficient security, to be approved by the county clerk, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant. Upon the disallowance of any claim, it shall be the duty of the county clerk to notify the claimant, his agent or attorney, in writing, of the fact, within five days after such disallowance. Notice mailed within said time shall be deemed sufficient." This section has been construed by the court in 6 Neb., pages 116 and 454; 13 Neb., 296; 24 Neb., 537; 6 Neb., 203; 12 Neb., 60.

Section 38, page 352, of the statutes provides as follows: "Any taxpayer may likewise appeal from the allowance of any claim against the county by serving a like notice within ten days, and giving a bond similar to that provided for in the preceding section." This section has been construed in 23 Neb., on page 434. It would seem from the statement of facts submitted by you to me that the remedy is provided for in section 38 above quoted, and that the remedy so provided is exclusive. In a recent case, Richards v. The County Commissioners of Clay County, opinion filed April 3, 1894, the court holds, where the legislature has provided the manner in which a thing shall be done, that the manner so provided is exclusive. In the case to which you refer, the legislature has provided a remedy. The action on the part of the board is one that no taxpayer in the county is compelled to accept as his remedy. The remedy is by appeal. If he has failed or neglected to avail himself of the remedy expressly offered by the statute, it would seem that he would now be estopped from seeking to recover from the clerk or his bondsmen the amount mentioned under the statement of facts submitted to this department.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Taxable interest in school land.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., June 3, 1894.

Hon. J. L. Epperson, County Attorney, Clay Center, Nebraska.

DEAR SIR: Your communication of recent date has been received and the same has been given careful consideration by me. Replying thereto permit me to say that our statute provides that school lands sold under any provision of the law in this state, or such as have been heretofore sold, shall not be taxable until the right of a deed shall have become absolute, except the value of the interest of such purchaser shall be taxable, which interest shall be determined by the amount paid and invested in improvement on such lands; provided the increased value of such improvement, by reason of live fences, fruit and forest trees, grown and cultivated on such lands, shall not be taken into account in assessing the value of such improvement. (See chapter 46, Public Finances, section 3899, page 843, Consolidated Statutes.)

The proposition that you present, if I understand it right, is, in substance, if A pays $1,000 for B's interest in a school land lease or contract, is the assessor required to assess the $1,000 paid for this interest? I answer, the assessor is required to assess the improvements on the land not otherwise provided for in the statute. For instance, the trees growing on the land become a part, as it were, of the realty. The other improvements that are placed upon school land can be, and are in a great many instances, removed from the land. Thus, improvements that do not become a part of the realty, and therefore that can be removed, should be assessed by the assessor; but the amount of money paid by A to B for his interest in, or rather his opportunity to obtain from the state, upon certain conditions, a deed to, the lands should not be included by the assessor, unless the right of a deed from the state has by reason thereof become absolute. The reason for this is plain, when the statute provides for the forfeiture by the proper parties of the contract of lease or purchase held by A in case he fails to comply with the terms of the contract. To hold that A should pay taxes on school land before he is entitled to a deed would be to hold substantially that the provisions for forfeiture on account of the failure of A to perform certain conditions of his contract must be set aside, and that the school land, which, under the circumstances,

continues to remain as the state's property, could be sold for taxes, and that A could redeem under other provisions of the statute. There is no doubt in my mind but what the position taken by you is the correct position, and that your construction of the statute should be sustained.

Your obedient servant, GEO. H. HASTINGS,
Attorney General.

Irrigation bonds.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., June 11, 1894.

Hon. B. F. Hastings, Grant, Neb.

DEAR SIR: Your request under recent date has been placed before me and the same has received my attention.

Your first question is, can irrigation canal bonds, under the laws of this state, be voted by Perkins county? The internal improvement act provides that any county in the state of Nebraska is authorized to issue bonds to aid in the construction of any railroad or other work of internal improvement, the amount to be determined by the county commissioners of the county, not exceeding ten per cent of the assessed value of all taxable property in the county; provided the county commissioners shall first submit the question of issuing bonds to a vote of the legal voters of the county. This question shall be submitted in the manner provided by chapter 9 of the Revised Statutes of Nebraska. (See Compiled Statutes, 1893, chapter 45, page 539.) In 1889 the legislature passed an act entitled "An act to provide for water rights and irrigation, and to regulate the right to the use of water for agricultural purposes." Section 9, article 2, of said act provides that canals constructed for irrigation or water-power purposes, or works of improvement, and all laws applicable to works of internal improvement, are applicable to such canals. (See Compiled Statutes, 1893, page 847.) My opinion is the legislature intended to grant the power to the people of the county to vote bonds for the purpose of constructing irrigation canals or water-ways, and that Perkins county, under the restrictions of the Compiled Statutes governing internal improvements, can vote bonds for that purpose.

Your second question is, in substance, in case the county should vote bonds, and subsequently the irrigation canals should be con-

structed, can the county own and control said canals and use the revenues derived therefrom in the payment of the bonds and interest? Doubtless an organization might be effected, which organization could own, take charge of, and operate the canals so constructed, but after careful examination I am constrained to the opinion the county itself, under our statute, could not own and operate the enterprise.

Your third question is as to the right of the county to use the proceeds of the bonds in constructing the canal outside the limits of the county and state. I find no statute that will furnish authority to expend the money raised by the sale of bonds of a county in constructing or building canals or water-ways into other counties, or that would permit the expenditure of money derived from the sale of the bonds above mentioned in obtaining a water supply from a source outside of this and in another state.

I remain, yours truly,

GEO. H. HASTINGS,
Attorney General.

The institue for the blind is a school and not an asylum.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., June 21, 1894.

William Ebright, Superintendent, Nebraska City, Neb.

DEAR SIR: Concerning your communication of recent date as to the pupils in the institution over which you have control that have graduated, and who decline to return to their respective homes, but claim the institution as their permanent abiding place and as an asylum for themselves, permit me to say the act governing the institution for the blind at Nebraska City was passed and took effect February 23, 1875, and is found on page 524, Compiled Statutes of Nebraska, revision of 1893.

From an exanination of the act above referred to there can be no doubt but that it was the intention of the legislature to create an institution in this state for the benefit of blind people who were unable to obtain an education in the common schools of this state, and who, by reason of their infirmity, would grow up in ignorance and without the ability of earning for themselves a livelihood. Section 12 of the act I have just cited provides as follows: "All blind persons, resident of this state, of suitable age and capacity, shall be entitled to an education in this institution, at the expense of the state. Each county

superintendent of common schools shall report to the principal of the institution for the blind, on the first day of April of each year, the name, age, residence, and post-office address of every blind person, and every person blind to such an extent as to be unable to acquire an education in the common schools, and who reside in the county in which he is superintendent." From this section it will be readily understood that it was not the intention of creating an asylum for the blind where they would be cared for by the state at all times, but it was the intention, as I construe it, to provide a means of education, and to provide that unfortunate class of persons with some means whereby they might be enabled to procure for themselves a livelihood. In the case of the State, ex rel. Davis, v. Bacon, found in 6 Neb., page 286, it was held, by a majority of the court, that the Nebraska institution for the blind, so far as its management was concerned, was in the hands of the Board of Public Lands and Buildings, and that, so far as the management of the institution was concerned, it did not belong to that particular class of institutions exempted by section 19, article 5, of the constitution of the state from the control of the Board of Public Lands and Buildings. I am of the opinion, therefore, that when the object for which the institution was created has been accomplished, and a class has been graduated from the institution, they are no longer entitled, as a matter of right, to be maintained as wards of the state at the institution for the blind. Of a necessity this must be so, or in the course of a few years the institution would be filled with inmates, former graduates thereof, and it would be impossible to give to any pupils the education or to teach them a trade such as was contemplated by the act which created it.

I remain yours very truly, GEO. H. HASTINGS,
Attorney General.

Vacancy in board of trustees of Wyuka cemetery filled by mayor and city council.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., July 18, 1894.

Hon. Lorenzo Crounse, Governor.

SIR: Replying to your communication of yesterday relative to the filling of the vacancy in the board of trustees of Wyuka cemetery, occasioned by the death, on the 10th inst., of Major A. G. Hastings, one of the members of the board, permit me to say that the question

presented, as I understand it, is, shall the vacancy be filled by the governor or by the city authorities of the city of Lincoln? Chapter 84, page 809, Compiled Statutes of Nebraska, provides for a state cemetery at Lincoln, Nebraska, and sets apart eighty acres of ground for that purpose. Section 2 of the same act provides for the election of cemetery trustees at the regular election of city officers by the voters of the city of Lincoln, and further provides that said board of trustees shall be a body corporate, with full power to sue and be sued, contract and be contracted with, and to acquire, hold, and convey property, real or personal, for all purposes consistent with the provisions of the act creating the said board. Section 103, page 465, Compiled Statutes, provides, among other things, that state and judicial district officers, and in the membership of any board or commission created by the state, where no other method is specially provided, the vacancy shall be filled by appointment by the governor; in county and precinct offices, by the county board; members of the county board, by the clerk, treasurer, and judge; in city and village offices, by the mayor and council. So that the question is presented, is the office of cemetery trustee a city office? If so, the vacancy must be filled by the mayor and city council, or the board of cemetery trustees, a board created by the statute; and no method being specially provided for the filling of a vacancy therein, does the governor of the state appoint? It appears that the officers constituting the board of cemetery trustees are elected by the voters of the city of Lincoln alone, that the state is not concerned therein in any degree, and I am forced to the opinion that such trustees are officers of the city, and that a vacancy occurring in such board should be filled by appointment by the mayor and council of the city of Lincoln as provided by law. I can find no provision in the constitution of the state that is not in harmony with the conclusion I have reached.

I remain, sir, your obedient servant, GEO. H. HASTINGS,
Attorney General.

Issue of bonds by a village.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., July 19, 1894.

Hon. Eugene Moore, Auditor of Public Accounts.

SIR: I beg to acknowledge the receipt of yours of the 14th inst.

concerning the registration of water bonds proposed to be issued by the village of Humphrey, in Platte county, and have examined the several questions you raise, and submit herewith my conclusions. It appears from the record you have submitted to this department that the village board duly passed an ordinance calling an election of the voters of the village of Humphrey on the 5th day of March, 1894, said election to take place April 3, 1894, at which said election there was submitted to the legal voters of the village of Humphrey a proposition to issue the bonds of said village to the amount of ten per cent of the assessed valuation of said village for the year 1894, but not to exceed, however, the sum of $8,000, said bonds to be dated June 1, 1894, to bear interest at seven per cent per annum, payable annually, and to be known as water bonds of said village, and to become due in twenty years after the date thereof, but payable any time after five years after the date of the same, the bonds to be used only in constructing and maintaining a system of water-works within the village of Humphrey.

Subdivision 15 of section 69, page 236, Compiled Statutes of Nebraska, gives to villages within this state the power and authority to issue bonds for the purpose of constructing and maintaining a system of water-works within the village and, among other things, such subdivision above cited contains the following provision: "Such cities or villages may borrow money or issue bonds for the purposes not to exceed ten per cent of the assessed value of the taxable property within said village according to the last assessment thereof for the purpose of steam engines or fire extinguishing apparatus, and for the purchase, erection, or construction and maintenance of such water-works," etc. You will observe the call for the election was made, as above stated, on the 5th day of March, 1894; that the election was duly called for the 3d day of April, 1894, but the amount of the issue was to be based and predicated upon the assessment of 1894 instead of 1893. When the ordinance was passed by the village board the election was held. When the bonds were dated, even though that is immaterial, the assessed valuation of the village of Humphrey was not known, and could not be known, as the same was not returned by the assessor. So that the assessment for the year 1893 was "the last preceding assessment." Section 63, chapter 77, Compiled Statutes, provides that each assessor shall, on or before the second Monday of June, make due re-

turn to the county clerk of his assessment for his district or precinct, and as the election was held two months prior to the date fixed by law for the return to be made by the assessor, I take it for granted such return was not made until after such election was held. This question has been before our supreme court in the case of State, ex rel. City of Sutton, v. H. A. Babcock, Auditor of Public Accounts, and is found in 24 Neb., at page 640. In that case the rule is fairly and clearly laid down that the amount of bonds to be issued must be based upon assessment at the time of the election, which in this case would be the assessment of 1893, and not that of 1894, as is provided for by the ordinance passed by the village board. Again, the amount of the bonds to be issued under the ordinance is vague, indefinite, and uncertain. The only certainty that is expressed is that in no event shall the amount issued exceed the sum of $8,000. That feature of the case I have not specially considered, as I deem the other matter conclusive; and I might add the same is true as to ordinance No. 49, a copy of which you have transmitted with your communication. For the reasons above given, I am of the opinion that the bonds issued under the ordinance and notice of election submitted are invalid, and that you should refuse to register the same. I return herewith papers transmitted to me.

I remain, sir, your obedient servant,

GEO. H. HASTINGS,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., July 23, 1894.

Hon. Eugene Moore, Auditor of Public Accounts.

DEAR SIR: I hand you herewith a letter signed by Chas. J. Barber, of the Home Fire Insurance Company of Omaha; also, beg to acknowledge receipt of your favor transmitting the same to me for my inspection. I have given the matter considerable examination and find that sections 2 and 3, page 284, Compiled Statutes of Nebraska, was enacted by the territorial legislature in 1864, and appears as chapter 25 of the Revised Statutes of 1866. It also is contained in the Revised Statutes of 1873. At the session of the legislature of 1873 an entirely new insurance law was enacted so far as the fire insurance companies are concerned. Section 41 of the act of 1873 repeals all

that portion or part of chapter 25 of the Revised Statutes of 1866, except so far as the same relates to the business of life insurance companies. The compilation of the statutes from 1873 on have invariably carried that chapter of the statutes for the same reason that they as compilers did not care to assume to say which part of the chapter relates to fire and which part to life insurance, I presume. You will notice the foot-note at the bottom of page 284. See, also, chapter 45 *post.* The 21st Neb., page 502, refers to this particular chapter. The court takes occasion to say in that case that the chapter is carried forward in the latest compilation, and is believed to remain in force for some purpose, manifestly for that of controlling life insurance cases and the business of life insurance. I take it, therefore, that the Session Laws of 1873 repeals all that portion of sections 2 and 3 which relates to fire insurance companies, but that the same stands so far as life insurance companies are concerned.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Registration of bonds by auditor.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., July 30, 1894.

Hon. Eugene Moore, Auditor of Public Accounts.

DEAR SIR: Replying to your question submitted to this department on the 24th inst., viz., whether or not municipal bonds which are dated and presumably issued on Sunday should be registered by you, permit me to say that the question, so far as bonds are concerned, has never been presented to our court, so far as I am able to learn. In the case of Horacek v. Keebler, 5 Neb., 355, our court held that neither at common law, nor under our statute, is a contract entered into on Sunday void for that reason. This was followed in the case of Fitzgerald v. Andrews, 15 Neb., 55. I am of the opinion, therefore, that if the question was presented to our court, the court would hold that the bonds were not void for the reason that they were dated on Sunday. I will say further, that I advised the Board of Educational Lands and Funds to reject the refunding bonds of Dakota county, Nebraska, recently for the reason that they were dated on Sunday, July 1, 1894. I did this for the reason that the state should assume no risk whatever and some other court might make a different

rule in regard thereto, as nearly all the states, except Ohio, Kansas, and Nebraska, hold that a contract entered into on Sunday is void. It is more a question for the purchaser of bonds than of their registration, and while I am of the opinion that a set of bonds dated on Sunday would be held good in our court, yet prudence and good business methods would dictate that another date be fixed that would not perhaps be questioned. So that, in case bonds are presented for registration that bear date on Sunday, I would advise that attention be called to the fact, and then if it be insisted upon, that they be registered as provided by law.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Guarding prisoners.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August —, 1894.

Hon. H. Whitmore, County Attorney, Franklin, Neb.

DEAR SIR: Replying to yours of the 21st inst. permit me to say, section 3006, page 695, Cobbey's Statutes, among other things, provides fees for the sheriffs of the several counties of this state as follows: For guarding prisoners, when it is actually necessary, $2 per day, to be paid by the county, and, if I understand your letter correctly, you desire to know whether your county should pay $2 per day for guarding prisoners during the day-time, and $2 per day for guarding prisoners during the night-time of the same day, making a total of $4 for each twenty-four hours. Bouvier defines "day" to be "the space of time which elapses while the earth makes a complete revolution on its axis. The space of time which elapses between two successive midnights." This is the definition also that has been taken from Blackstone. (See II Blackstone's Commentaries, 141.) The legal signification of the term "day" includes that time which elapses from the midnight to the next midnight. (See 39 Pa., 522.) Applying this to the question you ask, in my opinion a sheriff is entitled to $2 per day for guarding prisoners when actually necessary, to be paid by his county, and that day means from one midnight to the next midnight.

Yours truly, GEO. H. HASTINGS,
Attorney General.

Real estate sold for taxes.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August 9, 1894.

Hon. R. D. Sutherland, County Attorney, Nelson, Neb.

DEAR SIR: Replying to yours of recent date, permit me to say, if I understand your question correctly, certain real estate in Nuckolls county was sold at public sale for taxes in 1893. Later the treasurer of your county sold the same tract of land at private sale for taxes that had accrued prior to the sale that was made in 1893, but that the sale of 1893 did not include such prior taxes. Now, the question, the owner of the land desiring to redeem, is he obliged to pay interest on the amount of the sale had in 1893, twenty or ten per cent?

In the case of Tillotson v. Small, 13 Neb., 202, it was held that the treasurer had no right or authority to sell a tract of land except for all the delinquent taxes, penalty, interest, and costs, and that the tax deed based upon the sale for a portion only of the taxes due upon land being unauthorized, is ineffectual to convey the title, and that the holder would be entitled to a lien for taxes so paid and twelve per cent interest. This was under the law permitting twelve per cent in the state of Nebraska, instead of ten as at present. In the case of O'Donahue v. Hendrix, 13 Neb., 257, the court holds that under the revenue law in this state the sale of lands can be made only by including all taxes, interest, and costs due thereon at the time that the sale is made, and that the county treasurer has no right to sell real estate for a portion of the taxes due thereon, and that the sale being unauthorized, interest could be computed only at twelve per cent; now of course, as you understand, changed to ten. In this connection see, also, State v. Helmer, 10 Neb., 25, which holds precisely the same doctrine. I am clear, therefore, that, if I have correctly understood your question, the party holding the certificate for a sale made in 1893 is entitled to his money invested and interest at ten per cent from the date of such purchase until payment is made to him, and no more.

I remain, yours truly, GEO. H. HASTINGS,
Attorney General.

State license is necessary for peddler. It must be procured before he can ply his vocation.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August 18, 1894.

Hon. Lorenzo Crounse, Governor of Nebraska.

SIR: Your communication of this inst., covering a letter from J. E. Carey & Co., of Eau Claire, Wis., is before me. Replying thereto permit me to say that section 152, page 705, Compiled Statutes of Nebraska, provides as follows: "A tax of thirty dollars, for state purposes, shall be levied on each peddler of watches, clocks, jewelry, or patent medicines, and all other wares and merchandise, for a license to peddle throughout the state for one year." Section 153 provides as follows: "Such license may be obtained from the county clerk of any county, upon paying the proper tax to the treasurer thereof, and taking his receipt therefor." Section 154 provides as follows: "Any person so peddling without a license is guilty of a misdemeanor, and the person actually peddling is liable whether he be the owner or not, and upon conviction thereof shall be fined the sum of fifty dollars and stand committed until the fine is paid, or he is discharged as provided by law; and if any peddler refuses to exhibit his license to any person requiring a view of the same, he shall be presumed to have none, and if he produces a license upon trial, such peddler shall pay all costs of prosecution."

You will observe from the above that the state has levied a tax of $30 upon each peddler of watches, clocks, jewelry, patent medicines, and all other species of merchandise in this state; that the state license may be obtained from any county clerk of any county within the state in a manner pointed out by the statute. The authorities of the several cities and villages in this state have a right to levy and collect a license from peddlers plying their vocation within such city or village.

Subdivision 15, section 39, page 228, of the Compiled Statutes provides as follows: "To license, tax, suppress, regulate, and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatrical and other exhibitions, shows and other amusements, and to revoke such license at pleasure."

To the several questions propounded by your correspondent permit me to say that the state license referred to above protects the individual holding the same while plying his vocation any place within the

state, except in cities or villages, and in such cities or villages, when so required by ordinance, such peddler, even though he hold a state license, would be required to obtain a license from such village or city before he could ply his vocation within the corporate limits of the same.

To the question is there no clause in the law allowing a manufacturer to sell his own products, I answer, "No."

I return you herewith the letter of J. E. Carey & Co.

Your obedient servant, GEO. H. HASTINGS,
Attorney General.

Right to vote irrigation bonds.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August 23, 1894.

Hon. Lorenzo Crounse, Governor.

SIR: Your communication of recent date has been received by me and has been given careful attention. You will permit me to reply as follows:

Chapter 58, page 268, Session Laws, 1885, is an act to authorize precincts, townships, and villages to vote bonds to aid works of internal improvement, highways, railroads, bridges, etc. Section 1 of said act, among other things, provides that precinct or township organizations, according to law, is authorized to issue bonds in aid of works of internal improvement, highways, bridges, railroads, etc., to an extent not exceeding ten per cent of the assessed valuation of the taxable property at the last assessment within such township or precinct.

Section 9, chapter 93, article 2, Compiled Statutes, 1893, page 847, provides that canals constructed for irrigating or water-power purposes, or both, are declared to be works of internal improvement, and all laws applicable to works of internal improvement are declared to be applicable to such canals.

From the above it follows that a township can vote bonds for the purpose of aiding in the constructing of irrigation canals and ditches within its territory. I am constrained to the opinion, however, that while the township can vote bonds in aid of irrigation canals and ditches, and can impose conditions, yet the township cannot run and operate the canal or bridges.

The chapter of the Session Laws above referred to answers the

third question in your communication, as it provides that any precinct or township may issue bonds in aid of works of internal improvement, highways, bridges, etc. The same chapter sets forth the manner in which the bonds must be voted.

Trusting the above fully covers the questions raised by you in this department.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Action brought under section 104, chapter 16, Compiled Statutes.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August 31, 1894.

Hon. H. D. Travis, County Attorney, Plattsmouth, Neb.

DEAR SIR: I have yours of yesterday covering brief of Beeson & Root of your city concerning the matter of bringing an action under section 104 of chapter 16 of the statutes of this state. Permit me to say in reply thereto that the question raised by you was raised in the case of J. B. Hale v. The Omaha & Republican Valley R. R. Co., which was recently tried in the district court of Lancaster county. A judgment was rendered in favor of the plaintiff and the case taken to the supreme court, where it has been argued and submitted, but as yet no judgment has been pronounced. The title of that case is as follows: "James B. Hale, who sues for the state of Nebraska and for himself, v. The Omaha & Republican Valley R. R. Co." Plaintiff's attorneys are Pound & Burr of this city. The question of the right of the plaintiff to maintain the action under the provision of section 104 is challenged by the defendant company, and the right of the informer to bring an action and maintain the same in his own name appears to be upheld by the following cases: 38 Ill., 414; 56 Vt., 641; 19 Fed. Rep., 507; 95 N. C., 167; Maxwell's Justice Prac., 829 and 112 (note); 29 Fed. Rep., 699; 13 Mass., 222; 7 Conn., 181. While this practice is strongly combated by the defendants in that case, I am of the opinion that that action was properly seated, and that you, as prosecutor in Cass county, have taken the correct position, and that the action should be prosecuted in the name of the informer suing for himself and the state.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Counties and townships cannot own and operate irrigation ditches or canals.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August 23, 1894.

Hon. Lorenzo Crounse, Governor.

SIR: Your communication of recent date has been received by me and has been given careful consideration. You will permit me to reply as follows: Chapter 58, page 268, Session Laws, 1885, is an act to authorize precincts, townships, and villages to vote bonds to aid works of internal improvement, highways, railroads, bridges, etc. Section 1 of said act, among other things, provides that any precinct or township, organized according to law, is authorized to issue bonds in aid of works of internal improvement, highways, bridges, railroads, etc., to an extent not exceeding ten per cent of the assessed valuation of the taxable property at the last assessment within such township or precinct. Section 9, chapter 93, article 2, Compiled Statutes, 1893, page 847, provides that canals constructed for irrigation or water-power purposes, or both, are declared to be works of internal improvement, and all laws applicable to works of internal improvement are declared to be applicable to such canals. From the above it follows that a township can vote bonds for the purpose of aiding in the construction of irrigation canals and ditches within its territory. I am constrained to the opinion, however, that while the township can vote bonds in aid of irrigation canals and ditches and can impose conditions, yet the township cannot own and operate the canal or ditches.

The chapter of the Session Laws above referred to answers the third question in your communication, as it provides that any precinct or township may issue bonds in aid of works of internal improvement, highways, bridges, etc. The same chapter sets forth the manner in which the bonds must be voted.

Trusting the above covers the questions raised by you in this department,

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Relocating county seat.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August 24, 1894.

Hon. F. I. Foss, Crete, Neb.

DEAR SIR: Replying to your favor of the 10th inst. permit me to say that the question raised by you has never been determined in the supreme court. Hence, I give my own conclusions only concerning the same. Section 8 of chapter 17, article 3, Compiled Statutes of Nebraska, was enacted and became a law, together with the several sections of that subdivision, February 24, 1875, while article 2 of chapter 17, which provides for the organization of new counties, for the appointment of the several county officers of the county, the division of the territory into precincts, the holding of special elections, and the election of the county seats at the first election held in the county, became a law September 1, 1873. You will observe the particular wording of section 8, article 3, which is as follows: "If at either of the elections in this act provided for, more than two-fifths of the votes cast shall be in favor of the place where the county seat is then located, the question of the relocation thereof shall not be again submitted for the space of two years from the date of said election; and in case the county seat shall be relocated as herein provided for, the question of the relocation thereof shall not be again submitted to the electors for the space of five years thereafter.

"Sec. 9. When any such county seat shall have been relocated, it shall be the duty of county officers to forthwith remove their respective offices, and all county records, papers, and property in their offices or charge, to the place where said county seat shall have been relocated; and any county officer who shall refuse to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one thousand dollars, and a conviction of any such officer of such misdemeanor shall work a vacancy in his said office."

You will notice that the section provides that if at either of the elections in this act provided for, that is, the act of 1875, more than two-fifths of the votes shall be in favor of the place where the county seat is then located, etc.; and again, in case the county seat shall be relocated as therein provided for, then the question of relocation shall not be again submitted in the space of five years, etc. From this I

reason that the limitation contained in section 8 applied, first, to elections held under the law of 1875; second, that the five years' limitation applies only in those cases where a county seat has been relocated under the act of 1875. If the county seat be first of all located by a vote of the electors under the act of 1873, then the limitation contained in section 8 of the law of 1875 would not apply. No final determination of this question having been made, leaves the matter, of course, somewhat in doubt, but, after giving such light as I have been able to obtain, the above are my conclusions.

Yours truly, GEO. H. HASTINGS,
Attorney General.

Relocation of county seat.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., August 30, 1894.

Hon. Jacob Kiefer, County Attorney, Chappell, Neb.

DEAR SIR: Replying to your favor of the 27th inst., which reached me this morning, permit me to say that chapter 17, article 2, of the Compiled Statutes of Nebraska, page 341, provides for the organization of new counties, and among the provisions therein contained you will discover that section 5 provides that at the first election the voters of the county shall determine the permanent county seat, and for that purpose each voter may place upon his ballot his choice, and the place having a majority of all the votes polled shall be the county seat. That law was passed in 1873, and took effect September 1 of that year. Article 3 of the same chapter, page 343, provides for the relocation of county seats in counties where a county seat has already been duly located, as provided in article 2. This act of the legisiature was passed and took effect in 1875, so that it will be observed there are two separate and distinct laws upon the statute book; the one conferring authority upon the voters of newly organized counties to make a selection of a county seat upon such new organization; the other law, the one passed in 1875, provides for the relocation of county seats already established as provided for in article 2.

You will observe that in article 2 no limitation has been placed upon the voters for petitioning for a change in such location of the county seat as has been made by them, but in article 3, above referred to, section 8, page 344, it is provided as follows: "If at either of the

elections in this act provided for, more than two-fifths of the votes cast shall be in favor of the place where the county seat is then located, the question of the relocation thereof shall not be again submitted for the space of two years from the date of said election; and in case the county seat shall be relocated as herein provided for, the question of the relocation thereof shall not be again submitted to the electors for the space of five years thereafter." I am constrained to the opinion that these two statutes are not at all in conflict. One statute provides only for the location of a county seat upon the organization of the county, while the other statute provides for the relocation of county seats after the same shall have once been located, and that the limitations contained in section 8 applied only to those cases where a relocation of a county seat is sought to be made.

In the case of Solomon v. Fleming, 34 Neb., 40, it was held by the supreme court that where at an election a county seat is relocated at the place where it was at that time located, there is no authority for the calling of an election to relocate the county seat in such county within five years next following such relocation. Following this reasoning, it will be observed that where the conditions are reversed, the opposite result must follow.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Liability of county treasurer in depositing county funds in banks.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., September 6, 1894.

Ross L. Hammond, Esq., Fremont, Neb.

DEAR SIR: I am just in receipt of your favor of the 1st inst. concerning the duties of county treasurers in this state to deposit county funds. Permit me here to add that I note what you say concerning having written me some time since propounding some legal question. Replying thereto permit me to say no such letter as you have referred to ever reached this office. Hence, the reason for my not replying thereto. Chapter 5, page 91, of the Compiled Statutes of Nebraska, makes it the duty of the several county attorneys of this state, without fee or reward, to advise with all civil officers in their respective counties concerning their official duties, while section 3, chapter 63, article 6, of the Compiled Statutes makes it the duty of the attorney

general, when requested by them in all matters pertaining to the duties of their office, to consult with and advise the several county attorneys. So that you will observe my opinion is purely voluntary. However, I will give you my idea of the law to which you refer.

To your first question, "Shall a county treasurer advertise for bids from banks for deposits of county funds, or will a personal request suffice?" Section 18, page 372*a*, Compiled Statutes of Nebraska, provides as follows: "The county treasurer of each and every county in the state of Nebraska shall deposit, and shall at all times keep in deposit for safe keeping, in state or national banks, or in some of them doing business in the county and of approved and responsible standing, the amount of money in his hands belonging to the several current funds of the county treasury. Any such bank located in the county may apply for the privilege of keeping such funds upon the following conditions: All such deposits shall be subject to payment when demanded by the county treasurer on his check, and by all banks receiving and holding such deposits as aforesaid, and such bank shall be required to pay to the county, for the privilege of keeping such deposits, interest amounting to not less than three per cent per annum upon the amounts so deposited as hereinafter provided, and subject also to such regulations as are imposed by law, and the rules adopted by the county treasurer for holding and receiving such deposits." You will observe that among the provisions of that section the deposits are to be made subject to such regulations as are provided by law, and the rules adopted by the county treasurer for holding and receiving such deposits. It is clear to my mind that it was the intention of the legislature to procure as high a rate of interest upon the public funds deposited by the county treasurer as could be obtained, due regard being had for the safety of such funds, and the sufficiency of the bond that was offered to protect the deposit; and while the matter seems to have been left largely to the discretion of the county treasurers, and no positive and direct direction has been given in the statute, yet fairness and an earnest endeavor to carry out the intent and meaning of the statute would, in my opinion, direct that bids for county funds be advertised for.

To your second question, "Before any bank can receive funds for safe keeping, must it give a bond? If so, does it not by that act become a county depositor and must it not pay at least three per cent?" I answer, "Yes."

To your third question, "Can a bank receive county money, knowing it to be such, without giving a bond, and must it account for interest on such money?" Section 21, page 372*b*, Compiled Statutes of Nebraska, provides as follows: "The making of profit, directly or indirectly, by the county treasurer, out of any money in the county treasury belonging to the county, the custody of which the treasurer is charged with, by loaning or depositing or otherwise using or depositing the same in any manner, or the removal by the county treasurer, or by his consent, of such money or a part thereof, out of the vault of the treasurer's department, or any legal repository of the same, except for the payment of warrants legally drawn, or for the purpose of depositing the same in the banks selected as depositories under the provisions of this act, shall be deemed guilty of felony, and on conviction thereof, shall be subject to punishment in the state penitentiary for the term of not more than two years, or a fine not exceeding five thousand ($5,000) dollars, and shall also be liable under and upon his official bond for all profits realized from such unlawful using of such bonds, and it is hereby made the duty of the county treasurer to use all reasonable and proper means to secure to the county the best terms for the depositing of the money belonging to the county, consistent with the safe keeping and prompt payment of the funds of the county when demanded." You will see by the provisions of this section that the county treasurers are prohibited in as strong and direct language as it is possible to be used from depositing any of the money belonging to the several funds that he is directed to deposit in a public depository. He is also prohibited from making any profit on the use of such public money. So that, in my opinion, the several county treasurers of this state are responsible to their several counties for any moneys that they may obtain through the use of such public moneys that have been thus illegally or unlawfully loaned or deposited by them. Whether the bank receiving such deposits, knowing the same to be county funds, and knowing the same to be wrongfully deposited by the county treasurer with such bank, would be made accountable for the interest thereon so paid to the county treasurer, is a question not necessary under the present law for us to discuss, as the treasurer is directly liable, in my opinion, for such money.

Yours truly,

GEO. H. HASTINGS,
Attorney General.

Mutual insurance companies. Their right to take notes.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., September 11, 1894.

Hon. Eugene Moore, Auditor of Public Accounts.

DEAR SIR: In response to your communication of the 10th inst., concerning the Farmers Mutual Insurance Company of Nebraska, I will say to your question, "whether this and kindred companies can take notes for any purpose or in any amount of its certificate holders," that section 58, chapter 43, Compiled Statutes of Nebraska, provides as follows: "Such company may issue policies on detached farm dwellings, barns (except livery, boarding, and hotel barns), and other farm dwellings, and such property as may properly be contained therein, and also upon horses, mules, cattle, sheep, and hogs, against damage by fire, lightning, or tornado for any length of time, but not to extend beyond the limit and duration of the charter, and for any amount the company may deem safe on any one risk, nor shall any property be insured for more than two-thirds its actual value. All persons so insured shall give their obligations to the company, in a written or printed application, binding themselves, their heirs and assigns, to pay their *pro rata* share to the company of the necessary expenses and of all losses by fire, lightning, or tornado which may be sustained by any member thereof during the time for which their respective policies are written and they continue as members of the company, and they shall also, at the time of effecting the insurance, pay such percentage in cash and such other charges as may be required by the rules and by-laws of the company; *Provided*, That any company formed under the provision of this act may, in its by-laws, limit the percentage of the liabilites of its members."

You will observe that by the provisions of that section a mutual insurance company may issue policies on farm buildings, also live stock, against damage by fire, lightning, or tornado, to such an amount as the company may deem safe, not exceeding, however, two-thirds of the actual value of the property insured. To pay for this insurance the persons insured must give their obligations to the company, in a written or printed application, binding themselves, their heirs and assigns, to pay whatever may be the *pro rata* share of loss and expenses of the company during the time such owner's policy continues in force. You will observe, also, that at the time of the effect of the insurance

the insured must pay such a percentage of the amount of his policy as by the rules, regulations, and by the laws of the company is provided, and if I correctly understand your question, it is simply this, whether the company can waive the payment of such percentage in cash, as is provided for by the rules and by-laws of the company, and take a note from the insured in lieu of the cash? In my opinion this provision was placed in the statute for the purpose of affording protection, and for the purpose of paying the expenses of the company—in other words, for the benefit of the company itself rather than of the insured; and if the company sees fit to defer the payment of the percentage, provided for by their by-laws, to a certain and definite time to be fixed by the company, I see no valid or legal objection thereto. No rule or regulation of a mutual company, however, can, under the statute of this state, be so framed as to destroy the mutuality of a mutual company. The policy holders must stand precisely and exactly upon a parity.

I remain, your obedient servant, GEO. H. HASTINGS,
Attorney General.

Assignment of claim will not defeat right of county commissioners to set off claim for unpaid taxes.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., September 22, 1894.

Guy Lafferty, Burwell, Neb.

DEAR SIR: Replying to your favor of the 9th inst. permit me to say county commissioners are not compelled to attend the district court when a county is interested in a case pending therein unless subpœnaed the same as any other witness. If they do attend without such subpœna, they would be entitled to the same fees as other witnesses are entitled under similar circumstances; provided always that it be not necessary for them to attend in order to protect the interests of their county. It would be a matter largely of judgment with them and a matter that should properly be left to their discretion. If it was necessary then of course they would meet at the county seat as a board of commissioners and continue such session so long as the necessity for the same existed. In my opinion, when a claim against a county has been assigned, the county commissioners have the right to set off against such claim, even though it has been assigned, any claim that

the county may have for due and unpaid taxes under our statute. In other words, the assigning of a claim against the county does not prevent such set-off as is contemplated by the statute to be made. There is no such thing as an innocent purchaser of an unliquidated claim against your county.

Yours truly,

GEO. H. HASTINGS,
Attorney General.

Certificates of nominations made by political conventions.

ATTORNEY GENERAL'S OFFICE,
LINCOLN, NEB., September 28, 1894.

Hon. John C. Allen, Secretary of State.

SIR: I beg to acknowledge the receipt of your communication of yesterday, concerning the matter of the filing in your office of a certificate of nomination made by the convention, claiming to be the democratic state convention, held in Omaha, Nebraska, September 26, 1894. I note also that you say you are advised by the press of the state that another convention held in Omaha on the same day had placed in nomination another and a different set of individuals as candidates for the various state offices, which convention also claims to be the democratic state convention, and your inquiries are directed as to the course to be pursued by you as to filing certificates emanating from both these so-called democratic conventions.

Section 2 of an act to promote the independence of voters at public elections, to enforce the secrecy of the ballot, and to provide for the printing and distribution of ballots at public expense, approved March 4, 1891, defines a convention as an organized assemblage of voters or delegates representing a political party, which at the last election before the holding of such convention polled at least one per centum of the entire vote cast in the state or district for which the nomination is made. Section 3 of the same act provides that all nominations made by such convention shall be certified to in writing, signed by the secretary and president of the convention, and they shall make oath that the statements contained in the certificate are true to the best of their knowledge and belief, such oath to be attached to the certificate. Section 4 of the act above referred to, among other things, provides that certificates of nomination of candidates for office to be filed by the voters of the entire state shall be filed with the secretary

of state. Section 8 of the act above cited, among other things, provides that when nominations are made by a convention as provided for in section 3, the certificate of nomination to be filed with the secretary of state shall be filed not less than twenty-five days before the day fixed by law for the election of the persons so nominated. Section 9 provides that the secretary of state shall immediately, upon the expiration of the time within which certificates of nomination may be filed with him, certify to the county clerk of each county the name and description of each candidate, together with the other details mentioned in the certificate so filed with him. Section 11 of the same act provides as follows: "All certificates of nomination which are in apparent conformity with the provisions of this act shall be deemed to be valid, unless objections thereto shall be duly made in writing within three (3) days after the filing of the same. In case such objection is made, notice thereof shall forthwith be mailed to all candidates who may be affected thereby, addressed to them at their respective places of residence, as given in the certificate of nomination. The officer with whom the original certificate was filed shall in the first instance pass upon the validity of such objection, and his decision shall be final, unless an order shall be made in the matter by a county court, or by a judge of the district court, or by a justice of the supreme court at chambers, on or before the Wednesday preceding the election. Such order may be made summarily upon application of any party interested, and upon such notice as the court or judge may require."

You will observe that under this section of law all certificates of nomination which are in conformity with the provisions of this act—that is, those certificates of nomination which conform on their face to the provisions of the act above quoted—shall be deemed to be valid, unless objections thereto shall be made in writing within three days after the filing of the same. In case such objection be so made, then it will be your duty to mail a notice forthwith to each and every candidate named in the certificate of nomination who will be affected thereby, addressed to them at their respective place of residence, as the same shall be given in the certificate of nomination. In the case of state offices, it will be your duty in the first instance to pass upon the validity of such objection, in the event an objection be made, and your decision will be final, unless an order shall be made by the judge of

some court of competent jurisdiction touching the question on or before the Wednesday preceding the election. In view of the law as it stands to-day upon our statute, I am constrained to the opinion that it is your duty to file the certificates of nomination which are in apparent conformity with the provisions of the law, which I have quoted, and which is known as the "Australian Ballot Law." If any person desires, they can file an objection in writing, as provided by the statute, and you can then pass upon such objection and the questions that may be raised thereby. Your opinion will be final, unless some court of competent jurisdiction shall order otherwise. In the filing of the certificate of nomination you have but to satisfy yourself that the certificate conforms to the law upon that subject; that the certificate emanates from an assembly of voters or delegates purported to represent a political party which at the last election prior to the holding of the convention polled at least one per centum of the votes cast in the state; that the certificate itself is in due form, signed by the president and secretary, and duly sworn to, as the statute provides, and that it was filed within the time fixed by law. After having satisfied yourself upon this point, if you find the certificate conforms in all respects to the law, then it is your duty, in my opinion, to file the same in your office and preserve the same as the law directs. I think this fully answers all of your questions.

I remain, sir, your obedient servant,

GEO. H. HASTINGS,
Attorney General.

Form of ballot.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., October 8, 1894.

W. P. McCreary, County Attorney, Hastings, Nebraska.

DEAR SIR: Replying to yours of recent date permit me to say that section 139, chapter 26, Compiled Statutes, among other things, provides the form of the ballot to be used at any election held in this state, and among the provisions of the section above referred is the following: "The names of candidates for each office shall be arranged under the designation of the office in alphabetical order according to surnames, except that the names of electors of president and vice president of the United States presented in one certificate of nomina-

tion shall be arranged in a separate group. Every ballot shall also contain the name of the party or principle which the candidates represent, as contained in the certificates of nomination."

In the case of the State, ex rel. Christy, v. Stein, 35 Neb., 848, the opinion was written by Maxwell, J., and was concurred in by Norval, J., so far as the propositions of law stated in the syllabus is concerned. You will observe that the syllabus in that case contained no reference whatever to the number of times the persons named shall be placed upon an official ballot. The question before the court in that case was this: The name of the same individual appearing upon the ballot more than once. the form of the ballot being consented to by all parties in interest, does the fact that the name of any candidate appears more than once vindicate the ballot; or, in other words, where the name of an individual appears on the official ballot more than once as a democrat, as an independent, etc., should the ballots cast for such individual, both as a democrat and as an independent, be counted for such candidate, being voted for but once on the same ballot. Election laws are made but with one purpose in view,—that is, to obtain from the voter a fair expression of his sentiment. For this reason, except where otherwise expressly provided, election laws are directory rather than mandatory, and if the will of the voter can be gathered from the ballot cast, such ballots are to be counted, and the voters should not be disfranchised by reason of an error made by some official in preparing a ballot. For this reason the case above cited was decided in the manner that it was I have no doubt. The same doctrine is substantially laid down in the case of State v. Norris, 37 Neb., 300. After an examination of the law, and the opinions of the several courts in those states that have an election law similar to our own, I am of the opinion that a candidate should have his name placed upon the ballot but once, designating with apt and proper words the party or principles that he represents, as provided in the statutes. Out of necessity this must be so, else a candidate for an office in Adams county, for instance, could have his name placed on the ballot as many times as he could procure the signatures of voters to a petition representing or purporting to represent whatever principles or parties; and in the case of a candidate for a state office, the number of times a single individual could have his name appear upon the ballot would be limitless almost. One of the elementary principles in the construction of stat-

utes is that the intention of the law-maker should govern. From a careful reading of the law, known as the "Australian Ballot Law," I am of the opinion that it was the intention of the legislature to have the name of the candidate appear upon the ballot but once. Hence, in answer to your question, I say that the parties are entitled to have their names printed upon the official ballot but once; but that the party or parties, the principle or principles, that they represent may be described by such apt terms under the provisions of the statute as may be deemed proper.

I remain your obedient servant, GEO. H. HASTINGS,
Attorney General.

Form of ballot.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., October 31, 1894.

Hon. F. C. Powers, County Attorney, York, Nebraska.

DEAR SIR: I beg to acknowledge the receipt of your favor of the 29th inst. concerning the making up of the official ballot by the county clerk of your county. In my opinion, the supreme court of the state has already decided the question that you have propounded to me. In the case recently brought against the secretary of state the supreme court held that the name of the candidate should go but once upon the ticket, to be followed by words of designation, not exceeding five, as the party or principle represented by such candidate might desire. Now, I take it that the word "followed" in the opinion of the court has the ordinary, the general, and the commonly accepted signification of the word; that is to say, the name of the candidate is to be followed straight along on the same line by the necessary and proper words of designation. Again, by referring to the act known as the "Australian Ballot Law," you will observe that by the provisions of section 20, among other things, it is provided that the voter shall prepare his ballot by marking in the prepared margin or place, a cross (X) with ink opposite the name of the candidate of his choice, for each office to be filled, etc. If the party designation should appear in separate lines embraced by brackets, after the name of the candidate, wherever the candidate has more than one nomination, how will it be possible for the voter to mark with his cross opposite the name of the candidate? Again, the embracing of the designation of the party or

principle represented by the candidate in brackets is entirely unknown to our law. The election law nowhere recognizes, authorizes, or permits the use of brackets. It was the intention of the legislature, in my opinion, by limiting the words of designation to five, to avoid the use of more than one line in the designation following the name of the candidate, and to avoid the necessity of using brackets, as has been suggested. It is contended that the use of more than one line where a candidate has been nominated by two or more conventions is proper, for the reason that the law only permits nominations to be made by parties casting a certain per cent of the vote at the last general election, and that unless a line be preserved for each of the parties, it will be impossible to say whether the votes cast be those cast by democrats, by independents, by republicans, etc.; consequently at the next election such parties could only obtain a place on the ballot by petition. In this contention there is no force. In the case of State, ex rel. Christy, v. Stein, 35 Neb., 848, you will observe that Norval, J., concurred in the result arrived at by the writer of the opinion, and that he concurred in the propositions of law stated in the syllabus. In other words, the law of that case is stated in the syllabus and has the concurrence of the court; but the legal conclusions of the writer of the opinion, as found in the opinion itself, were not concurred in by the court. The syllabus of that case is as follows, and is the law of this state: "Under the provisions of section 20, chapter 26, Compiled Statutes, it is the duty of the judges and clerks of election to return a true list of the persons voting at that election and certify the same. It is also the duty of the judges and clerks to certify the aggregate number of votes cast for each person voted for; but it is no part of their duty to certify that certain persons received a specified number of votes as a democrat, and a certain number of people's independent, or otherwise, and such certification has no force or effect." For these reasons I have come to the conclusion that a candidate, no matter how many times he may have been nominated by different conventions or by petitions, is entitled to but one line upon the official ballot, and on the same line the proper and necessary designations are to be made.

I remain your obedient servant, GEO. H. HASTINGS,

Attorney General.

Domicile is changed only by the intention of the voter to change the same.

ATTORNEY GENERAL'S OFFICE,
LINCOLN, NEB., November 5, 1894.

A. C. Wright, Esq., Care of Executive Department, Lincoln, Neb.

DEAR SIR: I beg to acknowledge the receipt of your favor of recent date, in which you say you have resided in Stove Creek precinct, Cass county, Nebraska, since 1890, and in Cass county for twelve years last past; that in the month of January, 1893, you came to Lincoln, Nebraska, for the purpose of accepting a situation in the office of the chief executive of this state, and that you expect to return to your home in Cass county so soon as you shall have quit the position that you now occupy in the office of the governor; that your stay in Lincoln is for the purpose of enabling you to perform your duties as clerk in the governor's office, and that your stay here is temporary, conditioned upon your holding your present position.

Section 3 of chapter 26 of the Compiled Statutes of Nebraska, entitled "Elections," provides that every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, in the county forty days, and in the precinct, township, or ward ten days, shall be an elector. First, citizens of the United States. Second, persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States, on the subject of naturalization, at least thirty days prior to the election. Section 32 of the above chapter, page 456, defines the term "residence," as used in that chapter. The section just cited provides that the judges of election shall be governed by the following rules, as far as the same may be applicable: "The judges of election, or in cities of the first and second class, the registrars of voters, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as the same may be applicable: First—That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning. Second—A person shall not be considered or held to have lost his residence who shall leave his home and go into another territory or state, or county of this state, for temporary purposes merely, with the intention of returning; *Provided*, That six months' consecutive residence

in this state shall be necessary to establish a residence within the meaning of this chapter. Third—A person shall not be considered and held to have acquired a residence in any county in this state into which he has come for temporary purposes merely without the intention of making it his residence. Fourth—If a person remove to another territory or state, intending to make it his permanent residence, he shall have considered and held to have lost his residence in this state. Fifth—If a person remove to another state or territory, intending to remain there for an indefinite time and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may intend to return at some future period. Sixth—The place where a married man's family resides shall generally be considered and held to be his residence, but if it is a place of temporary establishment only, or for transient purposes, it shall be otherwise. Seventh—If a married man has his family fixed in one place and he does business in another, the former shall be considered and held to be the place of his residence. Eighth—The mere intention to acquire a new residence, without the act of removal, shall avail nothing, nor shall the fact of removal without intention. Ninth—If a person shall go into another territory or state, and while there shall exercise the rights of a citizen by voting, he shall be considered and held to have lost his residence in this state."

By the rule that has been established by the legislature of this state, you will notice that a person shall not be considered or held to have lost his residence who leaves his home to go into another county of this state, for temporary purposes merely, with the intention of returning. I understand from your letter that it is your intention to return to your home in Cass county so soon as you shall cease your labors in the office of the governor at Lincoln. If such be your settled and fixed intention, then I have no hesitation whatever in saying that you are a voter in your home precinct in Cass county, and not a voter in Lancaster county. In other words, if you consider Cass county your home, and it is your intention to return to that home when your employment at Lincoln is over, you are a legal voter in Cass county, and not in Lancaster county.

I remain, yours truly, GEO. H. HASTINGS,

Attorney General.

Qualifications of elector.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., November 5, 1894.

H. V. Baker, Esq., Bellevue, Neb.

DEAR SIR: Your letter of the 31st ult. was directed to me at Crete, hence did not reach me until this morning. Replying thereto permit me to say that section 1584, page 359, Consolidated Statutes of Nebraska, provides as follows: "Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, in the county forty days, and in the precinct, township, or ward ten days, shall be an elector: First, citizens of the United States; second, persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States, on the subject of naturalization, at least thirty days prior to an election,"—making, as you will observe, a condition precedent to voting, a residence of forty days in the county, one of the conditions. That section in full is as follows: "The judges of election, or in cities of the first and second class the registrars of voters, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable: First—That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning. Second—A person shall not be considered to have lost his residence who shall leave his home and go into another territory or state, or county of this state, for temporary purposes merely, with the intention of returning; *Provided*, That six months' consecutive residence in this state shall be necessary to establish a residence within the meaning of this chapter. Third—A person shall not be considered and held to have acquired a residence in any county in this state into which he shall have come for temporary purposes merely without the intention of making it his residence. Fourth—If a person remove to another territory or state, intending to make it his permanent residence, he shall be considered and held to have lost his residence in this state. Fifth—If a person remove to another state or territory, intending to remain there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may intend to return at som

future period. Sixth—The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment only, or for transient purposes, it shall be otherwise. Seventh—If a married man have his family fixed in one place, and he does business in another, the former shall be considered and held to be the place of his residence. Eighth—The mere intention to acquire a new residence, without the fact of removal, shall avail nothing, nor shall the fact of removal, without intention. Ninth—If a person shall go into another territory or state, and while there shall exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state." Under the provisions of these two sections of the statute, it is my opinion that a residence in your county of forty days is necessary in order for you to be a legal voter.

I remain, yours truly, GEO. H. HASTINGS,
Attorney General.

Salary of superintendent of Milford home.

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., November 11, 1894.

Mrs. C. S. Carscadden, Superintendent, Milford, Nebraska.

DEAR MADAM: Your favor of the 7th inst. only reached me this morning. Replying thereto permit me to say that section 6, page 468, Session Laws, 1887, provides as follows: "Said trustees, by and with the advice and consent of the governor, shall appoint a superintendent, a steward, a teacher or teachers, and such officers as in their judgment the wants of said home may require, and fix their salaries, and by and with the advice and consent of the governor may remove the same. All such officers shall be women." You will see by the above that the trustees, with the advice and consent of the governor, not only appoint the officers there named, but that they fix their salaries. The salary of the superintendent of your institution had previously been fixed in manner provided by law, and to readjust the same requires the action of the board of trustees and the governor. The Board of Public Lands and Buildings appreciate the situation and are entirely willing and anxious to pay the officers of your institution such sum of money as has been legally fixed for their services. The attention of the governor has been called to the situation by the board,

and he informs us that he has not been consulted as to any change in the rate for services. I am of the opinion, therefore, that no greater sum can be legally paid by the board than that which has been heretofore fixed as provided by law. If a different rate shall be fixed today, from a day to be named, the board has nothing further to say, but until such time as it shall be changed in manner provided by law, our duty, it seems to me, is plain. The governor expresses a desire to meet with the board of trustees at their first meeting.

I remain, yours truly, GEO. H. HASTINGS,

Attorney General.